

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,  
8 Debtor.

9 - - - - - x

10 Adv. Case No. 22-01139-mg

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,  
13 Plaintiffs,

14 v.

15 STONE et al.,  
16 Defendants.

17 - - - - - x

18 Adv. Case No. 22-01140-mg

19 - - - - - x

20 CELSIUS NETWORK LIMITED et al.,  
21 Plaintiffs,

22 v.

23 PRIME TRUST, LLC,  
24 Defendant.

25 - - - - - x

1 United States Bankruptcy Court  
2 One Bowling Green  
3 New York, NY 10004  
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5 December 5, 2022  
6 9:57 AM  
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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: FRANCES F. & KEVIN SU.

1 HEARING re Hybrid Hearing Using Zoom for Government RE:  
2 Debtor's Motion Seeking Entry of an Order (I) Permitting the  
3 Sale of Stablecoin in the Ordinary Course and (II) Granting  
4 Related Relief. (Doc# 832, 853, 855, 895, 90 I, 922, 925,  
5 933, 936, 954, 967, 970, 1043, 1058, 1076, 1085, 1086, 1186,  
6 1188, 1228, 1253, 1280, 1324to 1328, 1345, 1388, 1389, 1396,  
7 1400, 1406, 1412, 1414, 1416, 1417, 1418, 1430, 1463, 1464,  
8 1474, 1482, 1484- 1486, 1489- 1493, 1495 to 1499, 1502-1504,  
9 1506, 1507, 1511, 1515, 1516, 1517, 1519, 1533, 1535, 1537 -  
10 1540, 1547, 528)Hearing set for 12/05/2022 at 10:00 am and  
11 12/06/2022 at 10:00 am

12  
13 HEARING re Hearing Using Zoom for Government RE: First  
14 Motion to Extend Exclusivity Period for Filing a Chapter 11  
15 Plan and Disclosure Statement. (Doc# 1317, 1433, 1442, 1468,  
16 1470, 1471, 1473, 1475, 1476, 1477, 1487, 1479, 1494, 1536,  
17 1546)

18  
19 HEARING re Hearing Using Zoom for Government RE: Debtors'  
20 Amended Motion for Entry of an Order Authorizing the Debtors  
21 to Redact and File Under Seal Certain Confidential  
22 Information Related to the Debtors Key Employee Retention  
23 Plan. (Doc## 1425, 1427 to 1429)

24  
25

1 HEARING re Hearing Using Zoom for Government RE: Debtor's  
2 Amended Motion for Entry of an Order (I) Approving the  
3 Debtors Key Employee Retention Plan and (II) Granting  
4 Related Relief. (Doc# 1426, 1429)

5

6 HEARING re Adversary proceeding: 22-01139-mg Celsius Network  
7 Limited et al v. Stone et al Hearing Using Zoom for  
8 Government RE: Amended Motion to Dismiss Adversary  
9 Proceeding. (Doc# 7, 17, 18, 19)

10

11 HEARING re Adversary proceeding: 22-01140-mg Celsius Network  
12 Limited et al v. Prime Trust, LLC  
13 Hearing Using Zoom for Government RE: Motion to Approve  
14 Settlement with Prime Trust, LLC Pursuant to Rule 9019 of  
15 the Federal Rules of Bankruptcy Procedure. (Doc # 13)

16

17 HEARING re Hearing Using Zoom for Government RE: Motion to  
18 Approve Settlement with Prime Trust, LLC Pursuant to Rule  
19 9019 of the Federal Rules of Bankruptcy Procedure.  
20 (Doc# 1352)

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23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 AKIN GUMP STRAUSS HAUER FELD, LLP

4 Special litigation counsel for Celsius

5 One Bryant Park

6 New York, NY 10036

7

8 BY: MITCHELL HURLEY

9 DEAN CHAPMAN

10

11 ROCHE FREEDMAN, LLP

12 Attorneys for KeyFi & Jason Stone

13 99 Park Avenue, Suite 1910

14 New York, NY 10016

15

16 BY: KYLE WILLIAM ROCHE

17

18 GOODWIN PROCTER LLP

19 Attorneys for Prime Trust LLC

20 The New York Times Building

21 620 Eighth Avenue

22 New York, NY 10018

23

24 BY: HOWARD STEEL

25

1 KIRKLAND & ELLIS LLP

2 Attorneys for Celsius Network, LLC

3 300 N. LaSalle

4 Chicago, IL 60654

5

6 BY: PATRICK JAMES NASH

7 ROSS M. KWASTENIET

8 CHRISTOPHER KOENIG

9 DAN LATONA

10

11 KIRKLAND & ELLIS LLP

12 Attorneys for Celsius Network, LLC

13 601 Lexington Avenue

14 New York, NY 10022

15

16 BY: BEN WALLACE

17 GRACE BRIER

18 ELIZABETH JONES

19

20 KIRKLAND & ELLIS LLP

21 Attorneys for Celsius Network, LLC

22 1301 Pennsylvania Avenue, N.W.

23 Washington, D.C. 20004

24

25 BY: JUDSON BROWN

1 WHITE & CASE LLP

2 Attorneys for Official Committee of Unsecured Creditors

3 555 South Flower Street, Suite 2700

4 Los Angeles, CA 90071

5

6 BY: AARON COLODNY

7

8 WHITE & CASE LLP

9 Attorneys for Official Committee of Unsecured Creditors

10 1221 Avenue of the Americas

11 New York, NY 10020

12

13 BY: KEITH WOFFORD

14

15 WHITE & CASE LLP

16 Attorneys for Official Committee of Unsecured Creditors

17 111 South Wacker Drive, Suite 5100

18 Chicago, IL 60606

19

20 BY: GREGORY F. PESCE

21

22

23

24

25

1 UNITED STATES DEPARTMENT OF JUSTICE

2 Attorneys for the U.S. Trustee

3 201 Varick Street, Suite 1006

4 New York, NY 10014

5

6 BY: SHARA CLAIRE CORNELL

7 MARK BRUH

8

9 TEXAS OFFICE OF ATTORNEY GENERAL

10 PO Box 12548

11 Austin, TX 78711

12

13 BY: LAYLA MILLIGAN

14

15 NATL ASSN OF ATTORNEYS GENERAL

16 Attorneys for Coordinating States

17 1850 M Street, NW, 12th Floor

18 Washington, DC 20036

19

20 BY: KAREN CORDRY

21

22

23

24

25



1 KHANUJA KULPREET

2 Pro Se

3 21 Haran Circle

4 Millburn, NJ 07041

5  
6 VENABLE LLP

7 Attorneys for Ignat Tuganov

8 1270 Avenue of the Americas, 24th Floor

9 New York, NY 10020

10  
11 By: ARIE PELED

12  
13 MCELROY, DEUTSCH, MULVANEY & CARPENTER

14 Attorneys for The New Jersey Bureau of Securities

15 40 West Ridgewood Avenue

16 Ridgewood, NJ 07450

17  
18 BY: VIRGINIA T. SHEA

19  
20 CAMERON CREWS

21 Pro Se

22 92 Hudson Street

23 Hoboken, NJ 07030

1 DEBORAH FRANKEL

2 Pro Se

3 29210 Heathercliff Road

4 Malibu, CA 90265

5

6 LAWRENCE PORTER

7 Pro Se

8 770 NE 69th Street, PHE

9 Miami, FL 33138

10

11 IMMANUEL HERRMANN

12 Pro Se

13 8201 Schrider Street, Apt 6

14 Silver Spring, MD 20910

15

16 ANTHONY J. DEGIROLAMO

17 Trustee

18 3930 Fulton Drive NW, Suite 100 B

19 Canton, OH 44718

20

21 GEORGES GEORGIOU

22 Pro Se

23 Hakushima Naka Machi

24 Hiroshima, 730-0002

25

1 DANIEL FRISHBERG

2 Pro Se

3 284 Monroe Drive

4 Mountain View, CA 94040

5

6 MCCARTER ENGLISH, LLP

7 Attorneys for Certain Borrowers

8 245 Park Avenue

9 New York, NY 10167

10

11 BY: DAVID ADLER

12

13 WILLIS TOWERS WATSON

14 601 Lexington Avenue

15 New York, NY 10022

16

17 BY: JOSEPHINE GARTRELL

18

19 STATE OF VERMONT

20 Attorneys for VT Department of Financial Regulation

21 89 Main Street, Third Floor

22 Montpelier, VT 05620

23

24 BY: JENNIFER ROOD

25

1 WASHINGTON ATTORNEY GENERAL

2 Attorneys for Washington Department of Financial

3 Institutions

4 PO Box 40100

5 Olympia, WA 98504

6

7 BY: STEPHEN MANNING

8

9 BERNSTEIN-BURKLEY, P.C.

10 Attorneys for Stuart McLean

11 601 Grant Street

12 Pittsburgh, PA 15219

13

14 BY: MARK LINDSAY

15

16 MILES & STOCKBRIDGE P.C.

17 Attorneys for Josh Tornetta

18 100 Light Street

19 Baltimore, MD 21202

20

21 BY: EMILY DEVAN

22

23

24

25

1 MILBANK, TWEED, HADLEY & MCCLOY LLP

2 Attorneys for

3 55 Hudson Yards

4 New York, NY 10001

5

6 BY: NELLY ALMEIDA

7

8 TOGUT SEGAL & SEGAL

9 Attorneys for Ad Hoc Group of Custodial Account Holders

10 One Penn Plaza, Suite 3335

11 New York, NY 10119

12

13 BY: BRIAN KOTLIAR

14

15 JENNER BLOCK LLP

16 Attorneys for Fee Examiners

17 1155 Avenue of the Americas

18 New York, NY 10036

19

20 BY: CARL WEDOFF

21

22

23

24

25

1 TROUTMAN PEPPER HAMILTON SANDERS LLP

2 Attorneys for Ad Hoc Group of Withhold Account Holders

3 4000 Town Center, Suite 1800

4 Southfield, MI 48075

5  
6 BY: DEBORAH KOVSKY-APAP

7

8

9

10

11

12

13

14

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I N D E X

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
CHRISTOPHER FERRARO	28	32		
ROBERT COMPAGNA	47	55		
OREN BLONSTEIN	66	82/86/	101	
		96/98/99		

EXHIBITS:	PAGE:
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1 P R O C E E D I N G S

2 CLERK: Again, we're starting the recording for  
3 Celsius Network LLC, Case Number 22-10964. This is for the  
4 hearing on December 5, 2022 at 10 a.m. For the parties in  
5 the courtroom from Kirkland, can you please give your  
6 appearances -- start giving your appearances and specify who  
7 is in the courtroom and who -- can you hear me?

8 MR. KOENIG: Good morning. Good morning. It's  
9 Chris Koenig. We can hear you.

10 CLERK: Okay. Thank you, Chris.

11 MR. KOENIG: Good morning, and for the Debtors  
12 today, it will be Patrick Nash, Jr., Ross Kwasteniet, Chris  
13 Koenig, Dan Latona, Judson Brown, TJ McCarrick, Ben Wallace,  
14 Grace Brier, and we're all here in person.

15 CLERK: Thank you, and are there any --

16 MR. KOENIG: Thank you.

17 CLERK: Thank you so much. Are there any parties  
18 from Kirkland that will be speaking on the record this  
19 morning that are appearing using Zoom? Okay. I'm going to  
20 take that as a no. All right. Do we have creditors  
21 committee counsel?

22 MR. COLODNY: Yes. Hi, Deanna. It's Aaron  
23 Colodny, from White & Case, on behalf of the Official  
24 Committee of Unsecured Creditors. With me today will be my  
25 partners, Greg Pesce, Sam Hershey and David Turetsky and I



1 believe Keith Wofford is also on the Zoom.

2 CLERK: Okay. Thank you very much.

3 MR. WOFFORD: That is correct.

4 CLERK: Thank you, Keith. Anyone from the U.S.  
5 Trustee's office, if you can come to the podium and make  
6 your appearance.

7 MS. CORNELL: Good morning, Deanna. Shara Cornell  
8 and Mark Bruh on behalf of the Office of the United States  
9 Trustee.

10 CLERK: Okay. Thank you. Is Linda Rifkin going  
11 to be joining separately using Zoom?

12 MS. CORNELL: She may be joining via Zoom. Yes.

13 CLERK: Okay. Thank you.

14 MS. CORNELL: Thank you.

15 CLERK: All right. Are there any other parties in  
16 the courtroom? Come up to the podium one at a time and give  
17 your appearance. Again, any other parties in the courtroom  
18 that will be speaking on the record, please come up to the  
19 podium one at a time and give your appearance.

20 All right. For the parties that are on Zoom,  
21 Deborah Kovsky, are you going to be speaking on the record  
22 this morning? Again, Deborah or anyone from Troutman, are  
23 you going to be speaking on the record this morning? All  
24 right. (indiscernible) maybe one at a time, if the parties  
25 can unmute and start giving their appearances if they're

1 speaking on the record. You can use the raise hand function  
2 and we'll wind you up one at a time and take your  
3 appearance. All right. Josephine -- okay. Sorry. I think  
4 David, David Adler, you're first.

5 MR. ADLER: Good morning, Deanna. Can you hear  
6 me?

7 CLERK: I can.

8 MR. ADLER: This is David Adler, from McCarter  
9 English, on behalf of certain borrowers. I do not intend to  
10 speak this morning. But I will be speaking this afternoon.

11 CLERK: Okay. Thank you.

12 MR. ADLER: Thank you.

13 CLERK: You're welcome. We'll take separate  
14 appearances at the afternoon hearing as well. All right.  
15 Next, Josephine Gartrell.

16 MS. GARTRELL: Good morning. Josephine Gartrell,  
17 from Willis Towers Watson, on behalf of the declarants.

18 CLERK: Thank you.

19 MS. GARTRELL: Thank you.

20 CLERK: All right. Arie Peled?

21 MR. PELED: Good morning. Arie Peled, of Venable,  
22 LLP, on behalf of creditor, Ignat Tuganov.

23 CLERK: Thank you.

24 MR. PELED: Thank you.

25 CLERK: Layla?

1 MS. MILLIGAN: Good morning. Layla Milligan, with  
2 the Texas attorney general's office, appearing on behalf of  
3 the Texas State Securities Board and Texas Department of  
4 Banking.

5 CLERK: All right. Thank you.

6 MS. MILLIGAN: Thank you.

7 CLERK: All right. Jennifer Rood?

8 MS. ROOD: Jennifer Rood, on behalf of the Vermont  
9 Department of Financial Regulation.

10 CLERK: Okay. Thank you. Stephen Manning?

11 MR. MANNING: Stephen Manning, on behalf of the  
12 Washington State Department of Financial Institutions.

13 CLERK: Thank you. Virginia?

14 MS. SHEA: Good morning. Virginia Shea, from  
15 McElroy, Deutsch, Mulvaney & Carpenter, on behalf of the New  
16 Jersey Bureau of Securities and Nicole Leonard of my office  
17 may also be appearing.

18 CLERK: All right. Thank you very much. All  
19 right. Keith Wofford?

20 MR. WOFFORD: Yes. Good morning. Keith Wofford,  
21 from White & Case, on behalf of the committee. As noted  
22 before, my colleagues are in the courtroom.

23 CLERK: All right. All right. Mark Lindsey?

24 MR. LINDSAY: Good morning. Yes. Mark Lindsay,  
25 Bernstein-Burkley, on behalf of several Earn accounts,

1 customers, Stewart McClain, Keith and Jennifer Riles, Kim  
2 David Flora and Brett Flora and Courtney Burkes Steadman.

3 CLERK: Thank you. Emily Devan?

4 MS. DEVAN: Good morning. This is Emily Devan, of  
5 Miles & Stockbridge. With me on the call is my colleague,  
6 Joel Perrell, and we're here on behalf of creditor, Josh  
7 Tornetta.

8 CLERK: Okay. Thank you. All right. Are there  
9 any additional parties that have not given their appearance?  
10 Rebecca, you -- Rebecca Gallagher? Does she have a question  
11 or --

12 MR. DEGIROLAMO: Yes. Tony DeGirolamo,  
13 representing Celsius customer, Eric Wohlwend.

14 CLERK: I'm sorry. Can you say who you are  
15 representing again?

16 MR. DEGIROLAMO: Yes. Eric Wohlwend, W-O-H-L-W-E-  
17 N-D.

18 CLERK: Okay. Thank you.

19 MS. GALLAGHER: She never unmuted me.

20 CLERK: Yes. Rebecca, did you need to speak?

21 MS. GALLAGHER: Yes. I will be speaking today as  
22 a pro se.

23 CLERK: Okay. So Rebecca Gallagher. Thank you.

24 MR. HERRMANN: Immanuel Herrmann, pro se, Celsius  
25 creditor.

1 CLERK: Thank you, Mr. Herrmann. All right. For  
2 the parties that have joined, is there anyone that is going  
3 to be speaking on the record this morning that has not given  
4 their appearance yet? If you are going to be speaking on  
5 the record and have not given your appearance, please raise  
6 your hand and I will ask you to unmute one at a time and  
7 take your appearance.

8 All right. The party that joined as Kirkland, can  
9 you please identify yourself for the record? Again, the  
10 party that joined just as Kirkland, can you just identify  
11 yourself? If you do not identify yourself, I'll have to put  
12 you back in the waiting room. All right. Last call. The  
13 party that joined as Kirkland, if you could please identify  
14 yourself.

15 MS. JONES: Deanna, this is -- this is Elizabeth  
16 in the courtroom. It may be a Kirkland listen-only line.  
17 I'll just check with our team really fast.

18 CLERK: Yeah. If you could, that would be great.  
19 Thank you.

20 MS. JONES: Yeah.

21 CLERK: All right. Georges Georgiou? My  
22 apologies if I mispronounced your name. Are you making an  
23 appearance this morning? Are you speaking?

24 MR. GEORGIU: I am. Yes, please. Georges  
25 Georgiou, pro se creditor.

1 CLERK: Thank you so much. All right. Karen  
2 Cordry?

3 MS. CORDRY: Yes. Karen Cordry, National  
4 Association of Attorneys General, and I'm appearing on behaf  
5 of the coordinating states listed on my motion and I'm going  
6 to speak briefly today.

7 CLERK: All right. All right. So is there anyone  
8 here for the 2 o'clock hearing? We're going to -- I mean, I  
9 don't know if we're going to go straight through. I'm  
10 assuming we're going to take a recess and you can rejoin for  
11 2 o'clock and we'll be taking separate appearances for 2  
12 o'clock. So I just want to inform everyone of that. Nelly  
13 Almeida?

14 MS. ALMEIDA: Good morning. Nelly Almeida, from  
15 Milbank LLP, representing certain holders of preferred  
16 equity. I don't expect to be speaking. But I wanted to  
17 make the appearance.

18 CLERK: All right. Thank you. Stephen Manning?

19 MR. MANNING: Yeah. I entered my appearance  
20 earlier. Just to clarify, I don't plan on speaking this  
21 morning.

22 CLERK: All right. Thank you. All right. Bryan  
23 Kotliar?

24 MR. KOTLIAR: Hi. Good morning. Bryan Kotliar,  
25 of Togut, Segal & Segal, counsel to the ad hoc group of

1 custodial accountholders. I don't plan on speaking today.

2 CLERK: Thank you. All right. Carl Wedoff?

3 MR. WEDOFF: Hi. Good morning, Deanna. This is  
4 Carl Wedoff, from Jenner & Block, on behalf of the examiner.  
5 We don't plan on speaking this morning either. But I did  
6 want to note my appearance.

7 CLERK: All right. Thank you, Carl.

8 MS. JONES: Deanna, this is Elizabeth in the  
9 courtroom again. We were the Kirkland listen-only line, our  
10 Chicago office. Just let us know if you'd like them to  
11 unmute and announce. It's just a listen-only line.

12 CLERK: Oh, that's fine. I just wanted to make  
13 sure. Thank you.

14 MS. JONES: Thank you.

15 CLERK: All right. For the parties that have  
16 joined, if anyone is going to be speaking on the record this  
17 morning, please unmute your line one at a time and just give  
18 your appearance and also please use the raise hand function  
19 and I'll take your appearances one at a time.

20 All right. Any of the parties that have joined,  
21 please let me know if you will be speaking on the record  
22 this morning, and if you'd like to make an appearance. If  
23 so, please use the raise hand function.

24 CLERK: All rise.

25 THE COURT: All right. Good morning, everyone.

1 Please be seated.

2 CLERK: Good morning, Judge.

3 THE COURT: Yes, Deanna?

4 CLERK: I think Mr. Frishberg wanted to make an  
5 appearance, and then would you like me to read into the  
6 record the language for the hearing?

7 THE COURT: Yes. But please, I'm just  
8 reconnecting on my computer.

9 CLERK: Okay. Mr. Frishberg, if you could unmute  
10 and give your appearance, please.

11 MR. FRISHBERG: Yeah. Daniel Frishberg, pro se.

12 CLERK: All right. Thank you. All right. Please  
13 pay attention to the following information. All persons are  
14 strictly prohibited from making any recording of court  
15 proceedings, whether by video, audio, screenshot or  
16 otherwise. Violation of this prohibition may result in the  
17 imposition of monetary and nonmonetary sanctions.

18 The clerk of the court maintains an audio  
19 recording of all proceedings which constitutes the official  
20 record. Parties must state their name each time they speak  
21 on the court record. A party waiting to join with a full  
22 first and last name will be admitted from the waiting room.  
23 Parties that join with initials, partial name, a designation  
24 such as iPhone, et cetera, will not be admitted.

25 THE COURT: It's just going to take me another



1 minute here to connect.

2 CLERK: Sure.

3 THE COURT: All right. Good morning, everyone.

4 We have a long agenda today, both this morning and this

5 afternoon. So why don't we get started. We'll go -- the

6 second amended agenda was posted on the docket this morning.

7 It's ECF Docket Number 1595. So let's begin. Who's going

8 to begin for the debtors?

9 MR. NASH: Good morning, Your Honor. Pat Nash,

10 from Kirkland & Ellis, on behalf of the debtors. Your Honor

11 --

12 CLERK: Sorry, Judge. We can't hear you. Can you

13 hear me?

14 THE COURT: All right. I think the problem was

15 two connections.

16 CLERK: Yeah.

17 THE COURT: Go ahead, Mr. Nash. Can you hear Mr.

18 Nash, Deanna?

19 CLERK: Yes, I can. Pedro is on his way down to

20 help me.

21 THE COURT: That's okay. We're fine, I think. Go

22 ahead, Mr. Nash.

23 CLERK: Okay. Thank you.

24 MR. NASH: Your Honor, in connection with the

25 motion, the debtors filed four declarations. It would be

1 our preference and intent, Your Honor, to make our  
2 evidentiary case by way of the declarations and make those  
3 declarants available for cross-examination.

4 THE COURT: Yeah. So why don't you offer the  
5 declarations in evidence and, in due course, each one will  
6 be available for cross-examination.

7 MR. NASH: Your Honor --

8 THE COURT: Identify the declarant and the ECF  
9 docket number for the declaration.

10 MR. NASH: Your Honor, if it pleases the Court, we  
11 had discussed with the UCC putting each declarant on just to  
12 identify themselves for the Court and a little bit about  
13 their background and then move to get the declaration  
14 admitted, thereby giving the declarant an opportunity to  
15 warm up, so to speak.

16 THE COURT: All right. Do you want -- do you have  
17 -- I also -- you posted a little while ago a presentation as  
18 well.

19 MR. NASH: I don't intend to open the hearing with  
20 that presentation, Your Honor.

21 THE COURT: All right. So how do you wish to  
22 proceed then, Mr. Nash?

23 MR. NASH: I think, Judge, unless -- if Your Honor  
24 thinks that you would benefit by way of opening statements,  
25 we could do that, although I'm mindful that if I make an

1 opening statement, then everybody makes an opening  
2 statement.

3 THE COURT: I've read everything.

4 MR. NASH: I know you have, Your Honor. So if  
5 it's okay with you, Judge, I think we should get right in to  
6 the evidence and --

7 THE COURT: That's fine.

8 MR. NASH: All right. Thank you, sir. I'm going  
9 to turn the podium over to my partner, Mr. Brown.

10 THE COURT: Okay.

11 MR. BROWN: Good morning, Your Honor. Judson  
12 Brown, from Kirkland & Ellis, on behalf of the Debtors.  
13 Your Honor, at this time, the debtors call Chris Ferraro to  
14 the stand.

15 THE COURT: All right. Mr. Ferraro, if you would  
16 come up and raise your right hand and you'll be sworn.

17 CLERK: Please raise your right hand. Do you  
18 solemnly swear or affirm that the testimony you're about to  
19 give this Court will be the truth --

20 MR. FERRARO: Yes.

21 CLERK: -- the whole truth and nothing but the  
22 truth?

23 MR. FERRARO: Yes, I do.

24 THE COURT: All right. Please have a seat. Go  
25 ahead, Mr. Brown.

1 MR. BROWN: Thank you, Your Honor.

2 DIRECT EXAMINATION OF CHRISTOPHER FERRARO

3 BY MR. BROWN:

4 Q Could you please introduce yourself to the Court?

5 A Hi. My name is Christopher Ferraro. I'm the acting  
6 chief executive officer, chief restructuring officer and  
7 chief financial officer for Celsius, the debtors.

8 Q When did you join Celsius, Mr. Ferraro?

9 A I joined March 21, 2022.

10 Q In the approximately nine months that you've been with  
11 the company, can you just give the Court a brief description  
12 of the roles that you've had with Celsius?

13 A Yes. I started off managing financial planning and  
14 analysis, so financial analysis as well as investor  
15 relations. That role that I had in that capacity up and  
16 through July 11, 2022, where I was appointed the CFO right  
17 before the petition.

18 I held that role, and I continue to hold that role  
19 until this day. My responsibilities widened on September  
20 27th, I believe, 2022, where I was named acting chief  
21 restructuring officer or, sorry, chief restructuring officer  
22 and acting chief executive officer.

23 Q Now you said you joined Celsius in March of 2022. Can  
24 you just describe for the Court what you did before joining  
25 Celsius at that time?

1 A Yeah. I had a long career with JP Morgan and Chase  
2 where I ran financial analysis and many other kind of roles  
3 within the financial organization, spent nearly two decades  
4 there.

5 Then I went to Cerberus Advisory Company in which I  
6 worked on a few kind of legacy positions, some banks in  
7 Germany, restructuring costs, trying to improve  
8 profitability, optimizing the balance sheet. And then I  
9 went on a long sabbatical. I own a couple farms in Ecuador.  
10 So I spent two to three years kind of on the ground managing  
11 and developing those farm.

12 Q So why did you decide to join the crypto sector in  
13 March of this year, Mr. Ferraro?

14 A I think it's a very exciting technology that has  
15 massive kind of impact on society. My farms are in very  
16 rural areas of Ecuador, impoverished, very little  
17 opportunity.

18 And the first day I'm seeing folks lined up outside the  
19 banks on Fridays waiting in line for hours when they need to  
20 be working to feed their family I think had an effect on me,  
21 along with, you know, it's a technology space. So there's  
22 great flexibility in where I work. My family's in Quito,  
23 Ecuador. So I spend part of the year there and I'm also  
24 able to spend part of the year where I'm from in Seattle,  
25 Washington.

1 Q Now Mr. Ferraro, I want to turn to the reason we're  
2 here today, the debtors' motion to establish ownership of  
3 Earn assets and to sell certain stablecoin. Did you file a  
4 declaration in support of the debtors' motion?

5 A Yes, sir. I did.

6 Q I want to take a look at that.

7 MR. BROWN: Your Honor, may I approach?

8 THE COURT: Yes. Go ahead. So your office  
9 delivered a lot of large binders today.

10 MR. BROWN: Your Honor, I have the docket number,  
11 if that's helpful.

12 THE COURT: Well, do you know -- well, if you have  
13 extra copies --

14 MR. BROWN: I do.

15 THE COURT: All right.

16 MR. BROWN: I absolutely do, Your Honor.

17 THE COURT: Let's do that.

18 MR. BROWN: May I?

19 THE COURT: Yeah. Please. Thank you.

20 MR. BROWN: Mr. Ferraro.

21 BY MR. BROWN:

22 Q Mr. Ferraro, I've handed you a document that's marked -  
23 - or sorry, that was filed on the docket at Entry 1326. Do  
24 you have that in front of you?

25 A Yes. I do.

1 Q And do you recognize it?

2 A Yes. I do.

3 Q What is it?

4 THE COURT: Just hang on a second. Whoever is  
5 connecting over Zoom needs to mute their connection. If you  
6 don't, you will be disconnected. Go ahead.

7 CLERK: Sorry, Judge.

8 THE COURT: Yes?

9 CLERK: Can you see the document on your side?

10 THE COURT: No.

11 MR. BROWN: So actually, thank you, Deanna. If  
12 you can give my colleague, Jose Lopez, privileges to share  
13 the document, we can share it on the screen.

14 THE COURT: Okay.

15 CLERK: Okay. Use the -- thank you.

16 MR. BROWN: Thank you.

17 THE COURT: Thanks, Deanna.

18 BY MR. BROWN:

19 Q And now, Mr. Ferraro, you have in front of you and  
20 we've put on the screen the document that was filed at  
21 Docket Entry 1326. What is this document, sir?

22 A This is my declaration in support of the motion  
23 regarding ownership of Earn assets and the sale of certain  
24 stablecoins.

25 Q And Mr. Ferraro, is the testimony in here true and

1 accurate?

2 A Yes, sir.

3 Q And is that your signature at the end of the  
4 declaration, sir, electronically?

5 A Yes, sir. It's my electronic signature.

6 Q And do you adopt the testimony in this declaration as  
7 your testimony here today, Mr. Ferraro?

8 A Yes, I do.

9 MR. BROWN: Your Honor, at this time, the Debtors  
10 would offer Mr. Ferraro's declaration filed at Docket Entry  
11 1326 into evidence as his direct examination. He is  
12 obviously here and subject to cross-examination.

13 THE COURT: Are there any objections to the Court  
14 admitted into evidence Mr. Ferraro's declaration, ECF 1326?  
15 All right. Hearing none, it's admitted into evidence.

16 MR. BROWN: Your Honor, that's it for me at this  
17 time.

18 THE COURT: All right. Let me ask who within the  
19 courtroom, if anyone, wishes to cross-examine Mr. Ferraro.

20 Ms. Cornell?

21 So Shara Cornell, of the U.S. Trustee's office, is  
22 approaching the podium.

23 MS. CORNELL: Thank you, Your Honor.

24 THE COURT: Good morning.

25 CROSS-EXAMINATION OF CHRISTOPHER FERRARO



1 BY MS. CORNELL:

2 Q Mr. Ferraro, are you familiar with the budget filed on  
3 the Court docket at ECF Number 1111, on October 17, 2022?

4 A I'm familiar with the capital budgets that have been  
5 filed on the docket. Yes.

6 MS. CORNELL: May I approach, Your Honor?

7 THE COURT: Certainly.

8 MS. CORNELL: This is United States Trustee's  
9 Exhibit A.

10 THE COURT: I'm sorry?

11 MS. CORNELL: Exhibit A.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you.

14 BY MS. CORNELL:

15 Q Mr. Ferraro, are you familiar with the following budget  
16 that I just provided to you marked as United States  
17 Trustee's Exhibit A? This was provided to the United States  
18 Trustee's office on December 3, 2022.

19 A Yes, ma'am.

20 Q Is the document in front of you dated November 15,  
21 2022, weekly cash flow forecast, consolidated Debtors?

22 A Yes.

23 Q To your knowledge, has this document been filed yet?

24 A I don't specifically know. if it's on the docket, I  
25 assume it has.

1 Q It has not been filed.

2 A Oh. Then --

3 THE COURT: Well, then I misunderstand because you  
4 identified it as ECF Document 1111.

5 MS. CORNELL: I'm sorry, Your Honor. This is a  
6 new -- this is a new budget. That's why I'm -- this is a  
7 new budget that was only provided to the United States  
8 Trustee's office.

9 THE COURT: Okay. So this is not ECF 1111.

10 MS. CORNELL: This is not ECF Docket Number 1111.  
11 This is a different budget dated November 15, 2022, provided  
12 to the United States Trustee on December 3, 2022.

13 THE COURT: Okay.

14 BY MS. CORNELL:

15 Q Do you know when this document will be filed with the  
16 Court?

17 A We usually file one of these once per month along with  
18 the coin report and maybe the MORs.

19 Q Sure. The last budget was filed on October 17, 2022.  
20 Today is December 5, 2022. Can you and your counsels commit  
21 to filing an updated budget with the Court within the next  
22 two days?

23 THE COURT: Ms. Cornell, just conduct your cross-  
24 examination.

25 MS. CORNELL: Okay.

1 THE COURT: Okay?

2 MS. CORNELL: Okay.

3 BY MS. CORNELL:

4 Q According to the budget that you provided to our  
5 office, when will the Debtors, on a consolidated basis, need  
6 an infusion of liquidity?

7 A Late first quarter 2023. It gets quite tight in  
8 February. And then in March, we'll need additional  
9 liquidity.

10 Q For the record, what does need an infusion of liquidity  
11 mean to you?

12 A We need (indiscernible) cash to pay our obligations,  
13 namely employees, professional fees, other vendor expenses,  
14 et cetera.

15 Q So according to your testimony just now, you believe  
16 that you'll need an infusion of liquidity close to the end  
17 of February/early March of 2023; is that correct?

18 A Yes.

19 Q Will any of the individual Debtors, not on a  
20 consolidated basis, require an infusion of liquidity prior  
21 to that date?

22 A We -- I believe on the docket, for the last publicly  
23 filed one, had mining kind of needing liquidity in January  
24 of 2023. Subsequently, now these are internal kind of  
25 forecasts, which should be posted shortly, it looks as

1       though mining and the consolidated Debtors are kind of in  
2       the same position now, really mid-March, March --

3               THE COURT: When you say same position, what do  
4       you mean?

5               THE WITNESS: Both needing liquidity around the  
6       same time in March. This was because some of the mining  
7       kind of power deposits, we originally had forecasted that  
8       they would all be fixed-rate blocks. So we'd be locking in  
9       fixed hedges which come up with higher deposits.

10              We have now decided that we are going to, based  
11      upon kind of the market backdrop, do variable blocks. We  
12      can fix these blocks at any point in time. They come with  
13      lower power deposits upfront. So that kind of pushed out  
14      the cash flows a little bit for mining and put us in a  
15      better spot.

16      BY MS. CORNELL:

17      Q       Okay. So just for clarification and for the record,  
18      it's your testimony today that both on a consolidated basis  
19      and on an individual basis for each of the Debtors, that  
20      they will not need an infusion of liquidity or cash until  
21      March of 2023?

22      A       That's my latest understanding. Yes.

23      Q       On either a consolidated basis or an individual Debtor  
24      basis, are the projections that you just provided taking  
25      into account the Prime Trust settlement?

1 A It doesn't impact this. The Prime Trust settlement  
2 will be returning coins, not to my understanding.

3 Q The DeFi payments?

4 THE COURT: I'm sorry? Ask your question again.

5 MS. CORNELL: Oh, I'm sorry.

6 BY MS. CORNELL:

7 Q On either a consolidated basis or an individual Debtor  
8 basis, are the projections you just provided taking into  
9 account the DeFi payments?

10 A To pay off what we requested relief to pay off for DeFi  
11 (indiscernible) around \$3 million. Yes. That's embedded  
12 in, to my understanding off memory. Yes. It's about \$3  
13 million.

14 Q Okay. On either a consolidated basis or on an  
15 individual Debtor basis, are the projections you just  
16 provided taking into account the proposed sale of GK8?

17 A No.

18 Q At what point would your projections include the  
19 proceeds of the sale of GK8?

20 A When we believe it's certain and likely and probable  
21 that it will close and we understand the timing. So we're  
22 hopefully getting closer and closer to that point. But  
23 right now, given the backdrop, it's hard to, with certainty,  
24 include that type of deal closing in the cash flows given,  
25 you know, the main fear here is entering kind of

1 administrative insolvency and not being able to fund  
2 (indiscernible) obligations.

3 Q But to your knowledge, the company or Alvarez, in  
4 conjunction with the company, have not performed a separate  
5 cash flow budget forecast taking into account the GK8 sale.

6 A We know roughly what those proceeds would be if they  
7 come to the estate. So that would give us, you know, call  
8 it another month-and-a-half to two months of runway.

9 Q Do the Debtors support any non-Debtor entities' ongoing  
10 operations?

11 A We have push funding (indiscernible) intercompany  
12 lending to some of the non-Debtors. The Israeli entity and  
13 the UK entity have received some funding. Yes.

14 Q On the budget that was marked as United States  
15 Trustee's Exhibit A, can you point to any line items that  
16 would deal with non-Debtor disbursements?

17 A I'm not -- I can't remember off memory if we had any  
18 additional disbursements funded to the non-Debtors in this  
19 forecast. GK8 is to the tune of around \$500,000 per month  
20 as kind of their funding need. And I don't have the Israeli  
21 entity off the top of my mind. So it could be an additional  
22 million dollars or something that wasn't included here. But  
23 typically we would include those required fundings on the  
24 Debtors, consolidated Debtors' statement.

25 Q Okay. As of today's date, the budget that is marked as

1 United States Trustee's Exhibit A does not break out those  
2 types of costs.

3 THE COURT: I don't understand your question.

4 MS. CORNELL: I'm saying that this budget does not  
5 break that out, and it's --

6 THE COURT: Doesn't break out what?

7 MS. CORNELL: Any payments or line items for  
8 ongoing operational expenses for non-Debtor entities.

9 BY MS. CORNELL:

10 Q Is that accurate?

11 A Yeah. It's not listed here in detail. Like I said,  
12 it's to the tune of around a half a million dollars a month  
13 for GK8 and I think Israel is close to that as well, the  
14 Israeli entity. So maybe a million a month. So if there  
15 was a couple months' funding needed, it would be a total of  
16 about \$2 million, which would be included, to my  
17 understanding, in the numbers. It's just not broken out  
18 separately to your point.

19 Q If the preferred shareholders succeed in their  
20 assertion that the value for GK8 and/or mining inure to the  
21 preferred shareholders, do you anticipate any type of  
22 recoupment of those operational funds paid during the  
23 pendency of this bankruptcy case?

24 A There's intercompany loans. So I would assume that the  
25 loans would have to be extinguished in that example that you

1 gave, Ms. Cornell.

2 Q What about, for example, if we were considering what  
3 you suggested was about a \$500,000 ongoing monthly payment  
4 to GK8? If GK8, as the preferred shareholders assert, if  
5 the value of GK8 actually inures to the preferred  
6 shareholders, do the Debtors intend to recoup the  
7 operational expenses that they're expending at this point in  
8 time?

9 A That would be my understanding.

10 Q Okay. Have the Debtors explored other avenues other  
11 than the proposed sale of \$18 million worth of stablecoin?

12 A Yes. We have. You know, we looked at all of the  
13 different funding stack, all of the different opportunities.  
14 The cheapest is the discussion that we're having here today  
15 about selling stablecoin. It comes with really no  
16 transaction costs, no borrowing costs.

17 The most expensive would be debtor-in-possession  
18 financing. This could be anywhere of 20-plus percent kind  
19 of cost to the estate per year. And, you know, then in  
20 between you have kind of secured financing on DeFi  
21 (indiscernible) or through centralized counterparties which  
22 carries its own risk, right. As we've all read in the  
23 newspaper, these types of lending agreements would require  
24 us to post collateral. And given the backdrop, at least in  
25 the cryptocurrency industry, that carries a risk there that



1 your collateral may not be returned.

2 So probably the cheapest is stablecoin, and the most  
3 expensive is PIP financing, DeFi borrowings and kind of  
4 centralized counterparties in the mix.

5 Q Would the stablecoin that you're seeking to sell today  
6 be used as collateral for such a debtor-in-possession loan  
7 in the future?

8 A Not to my understanding, no.

9 Q To your understanding, could they be used?

10 A It wouldn't make sense to pay interest to borrow  
11 (indiscernible) basically something that's exchangeable for  
12 (indiscernible). We would be paying 20, 25 percent out for  
13 what effectively is interchangeable currencies.

14 Q Okay. Would the sale of the stablecoin you seek to  
15 sell today impact a potential in-kind distribution to  
16 creditors?

17 A The way I view it is it's all property of the estate.  
18 So everything impacts the distribution to creditors. The  
19 more the case extends, right, the less available to them,  
20 the most costs there are. So I mean, it's not really the  
21 sale of stablecoins that impacts the estate. It's more of  
22 kind of the passage of time and the expense related to the  
23 case.

24 Q To your knowledge, have the Debtors exchanged any other  
25 types of cryptocurrency for stablecoins postpetition?

1 A Postpetition, no. There's no coin movement. We're not  
2 allowed to exchange or trade coins or liquidate coins  
3 without Court approval.

4 THE COURT: Let me ask you a question, Mr.  
5 Ferraro. I think at the first day hearing, Mr. Nash,  
6 Debtors' counsel, Mr. Nash, said that the Debtors hoped to  
7 have an in-kind distribution to creditors, in-kind meaning  
8 whatever type of crypto they deposited, they would receive a  
9 distribution in kind.

10 If the Debtors were to sell all of the stablecoin,  
11 if the Court determined it was property of the estate and  
12 the Debtor sold all of that stablecoin, I think this goes to  
13 Ms. Cornell's question. How would the Debtor be able to  
14 make an in-kind distribution of stablecoin to the creditors,  
15 the accountholders who had deposited stablecoin? You  
16 wouldn't have it anymore.

17 THE WITNESS: Yeah. That's a good point. My  
18 understanding is that as we get cash in the door, we will be  
19 converting that back to coin to distribute. So cash would  
20 convert back to coin for in-kind distribution. So whether  
21 it's stablecoin sold from (indiscernible) if we collect on  
22 EFH, that'll go back into purchasing coin that will then be  
23 returned to the estate.

24 THE COURT: Thank you.

25 THE WITNESS: So it's really the usage of the cash

1 and the resources.

2 THE COURT: Thank you. Go ahead, Ms. Cornell.

3 MS. CORNELL: Thank you.

4 BY MS. CORNELL:

5 Q How was it determined that \$18 million worth of  
6 stablecoin should be sold?

7 A Yeah. So we looked at our total stablecoin holdings,  
8 and I believe Robert Compagna's declaration laid this out in  
9 the back, we look at what's in the main Fireblocks account  
10 as well what's in the custody workspace and then we reduce  
11 all of the stablecoin, what we're referring to is reserved  
12 liabilities, including custody, withheld and any collateral  
13 that was posted as part of the borrower's program.

14 THE COURT: That's how you got to the \$18 million?

15 THE WITNESS: That's how we get to the \$18  
16 million, yeah, which is effectively the stablecoin related  
17 to the (indiscernible).

18 BY MS. CORNELL:

19 Q To your knowledge, will the Debtors seek to sell  
20 additional stablecoin in the future for liquidity purposes?

21 A No. This is -- we need the rest in order to kind of  
22 allow for the custody and withheld (indiscernible) and we're  
23 holding back some due to the borrowers' kind of collateral  
24 program given that that's a key kind of legal question  
25 outstanding.

1 THE COURT: Is the \$18 million all of the  
2 stablecoin other than withhold, custody, borrowing?

3 THE WITNESS: That's absolutely correct, Your  
4 Honor. Yes.

5 THE COURT: Okay.

6 BY MS. CORNELL:

7 Q What will the proceeds of the sale of stablecoin today  
8 be used to fund?

9 A Yeah. So it will be used to fund payroll. It will be  
10 used to fund vendor expenses, non-labor expenses. It's used  
11 to fund all of the people in the courtroom sitting here  
12 today. It's a very expensive case. So Debtors' advisor,  
13 committee advisors, ad hoc groups, U.S. Trustee, et cetera.  
14 So, you know, this is a very complex and long -- it appears  
15 -- it feels at least from me sitting --

16 THE COURT: I think the ad hoc committees would  
17 probably like very much that you said they would be paid by  
18 the Debtors because (indiscernible) --

19 THE WITNESS: Sorry. Strike that. But it's a  
20 very expensive case, and it has a lot of complex items in  
21 there. So it'll largely go to fund the case and then also  
22 some of the internal processes.

23 BY MS. CORNELL:

24 Q So to confirm for the record, the proceeds from the  
25 sale today will not go to the mining business?

1 A I mean, mining will need liquidity sometime in March.  
2 So if we have to -- we'll have to find liquidity from  
3 mining. That could either be done through an intercompany  
4 loan or it could be done through selling other mining  
5 assets, say rigs.

6 We have some coupons for the manufacturers for credits  
7 because the rig costs have come down. So, I mean, there are  
8 things that potentially we could do to raise liquidity in  
9 mining. But at some point in time, mining will need  
10 additional liquidity . if that would be done, it would  
11 likely be done with an intercompany loan, I would assume.

12 Q So is it your testimony here today that the majority of  
13 the proceeds of the sale of stablecoin will go to fund the  
14 reorganizational expenses in this case, including Chapter 11  
15 expenses and professional fees?

16 A Yes.

17 Q To your knowledge, can you estimate on a monthly basis  
18 what that burn rate would be?

19 A So the burn rate related to kind of advisors is between  
20 \$15 to \$20 million per month. As I stated before, Ms.  
21 Cornell, the mining business is largely from an operational  
22 standpoint cash-flow positive. There are some kind of tail  
23 end buildouts and power deposits, sales and use tax as we  
24 employ rigs that still need to go out through kind of the  
25 first quarter. But in general kind of mining is self-

1 sustainable once we get through that. And then the non-  
2 mining Debtors still has a small burn rate. But we've cut  
3 expenses drastically 70 to 80 percent and that burn rate is  
4 really minimized now.

5 Q Will any of the proceeds from the sale of stablecoin  
6 here today be used -- just one moment. Will any of the  
7 proceeds of sale of stablecoin today be used to pay sales  
8 and use taxes?

9 A Again, back to the mining needs, right, when I say by  
10 the end of the March, we will need to fund mining, the sales  
11 and use taxes are more early on in the quarter, the first  
12 quarter 2023. So we should have liquidity to pay for those  
13 as those get -- as those rigs get deployed. So I think of  
14 cash as fungible within mining. So it's hard for me to say  
15 what every dollar is used for. But in theory we should have  
16 enough to pay, as we deploy rigs, the sales and use tax.  
17 But in March, we will need liquidity for mining.

18 MS. CORNELL: Okay. Thank you. That's all today.

19 THE COURT: Any other cross-examination of Mr.  
20 Ferraro? You're excused. Thank you very much. Well, I  
21 should -- any redirect?

22 MR. BROWN: No, Your Honor.

23 THE COURT: No? You're excused. Thank you very  
24 much for your testimony.

25 MR. BROWN: Your Honor, I'm going to hand the

1 baton to my partner, Ben Wallace.

2 THE COURT: Okay.

3 MR. WALLACE: Your Honor, good morning.

4 THE COURT: Good morning.

5 MR. WALLACE: Ben Wallace, from Kirkland & Ellis,  
6 on behalf of the Debtors. The Debtors call Mr. Robert  
7 Compagna to the stand.

8 THE COURT: All right. Mr. Compagna, come on up.  
9 If you would raise your right hand, you'll be sworn.

10 CLERK: Do you solemnly swear or affirm that the  
11 testimony you're about to give this Court will be the truth,  
12 the whole truth and nothing but the truth?

13 MR. COMPAGNA: I do.

14 THE COURT: Thank you very much. Have a seat.

15 MR. COMPAGNA: Thank you.

16 MR. WALLACE: May I, Your Honor?

17 THE COURT: Go ahead, Mr. Wallace.

18 DIRECT EXAMINATION OF ROBERT COMPAGNA

19 BY MR. WALLACE:

20 Q Good morning, sir.

21 A Good morning.

22 Q Please introduce yourself to the Court.

23 A Hi. My name is Robert Compagna. I'm the managing  
24 director in the restructuring practice of Alvarez & Marsal.

25 Q What is Alvarez & Marsal, sir?

1 A Alvarez & Marsal is a multidisciplinary consulting  
2 firm, with a focus -- one of the main focuses being  
3 restructuring.

4 Q And how long have you been working as a restructuring  
5 advisor?

6 A I've been at A&M for about 20 years, and I've been in  
7 the restructuring space for over 25.

8 Q Are you certified as a restructuring advisor?

9 A I am, yes. I'm a certified insolvency and  
10 restructuring advisor.

11 Q And other than that certification, do you have any  
12 training or certifications relevant to this case?

13 A I started my career at Arthur Anderson and trained as a  
14 CPA and hold a CPA designation which I've since gone  
15 inactive on. But yeah, I have a CPA designation.

16 Q Have you --

17 THE COURT: Which office are you in?

18 THE WITNESS: I'm in the New York office.

19 BY MR. WALLACE:

20 Q Have you served as a restructuring advisor in other  
21 bankruptcy cases?

22 A Yes. Many, many cases.

23 Q Mr. Compagna, do you have experience projecting and  
24 helping an estate managing its cash flow?

25 A Ye. Managing cash flow is one of the services we tend



1 to provide in each of our cases.

2 Q And do you have experience identifying assets that an  
3 estate might want to sell to generate additional cash flow?

4 A Part that liquidity management process, yes, that's  
5 something we do.

6 Q In this case, did you perform analysis projecting the  
7 Debtors' cash flow?

8 A We did. Yes.

9 Q And did you perform analysis identifying assets that  
10 the Debtors might want to sell to generate additional  
11 liquidity?

12 A Yes. We did.

13 Q And are the findings of that analysis contained in a  
14 declaration that you filed in support of this motion?

15 A Certain of those findings, yes, are contained in the  
16 declaration filed here.

17 Q And would you recognize that declaration if I showed it  
18 to you?

19 A I would.

20 MR. WALLACE: Your Honor, may I approach?

21 THE COURT: Yes. Go ahead. Thank you, Mr.  
22 Wallace.

23 MR. WALLACE: You're welcome

24 BY MR. WALLACE:

25 Q Mr. Compagna, what have I just handed you?

1 A It looks like a copy of the docketed declaration I  
2 filed in support of stablecoin, the stablecoin sale and Earn  
3 assets.

4 Q Do you see the docket ID at the top?

5 A I do. Yes. 132- --

6 Q Could you read that into the record? I'm sorry, sir.  
7 Go ahead.

8 A Yeah. Docket Number 1328.

9 Q Okay. Could you take a look at the seventh page for  
10 me?

11 A Okay. I'm there.

12 Q Is that your signature?

13 A It is. Yes. My electronic signature.

14 Q And the following page after the blank one?

15 A Yes. I'm there.

16 Q Is that an exhibit you filed in connection with the  
17 declaration?

18 A It is. Yes.

19 Q Is the declaration testimony and everything contained  
20 in the exhibit true and accurate to the best of your  
21 knowledge?

22 A It is, yes.

23 Q Mr. Compagna, do you adopt the declaration and the  
24 attached exhibit as your testimony for purposes of today's  
25 hearing?

1 A I do.

2 MR. WALLACE: Your Honor, we move this, what has  
3 been marked on the docket as Docket Number 1328, into  
4 evidence.

5 THE COURT: Any objections? All right. Mr.  
6 Compagna's declaration dated November 11, 2022, it is ECF  
7 1328, is in evidence.

8 MR. WALLACE: And Your Honor, that's it for me,  
9 unless you think it would be helpful for us to walk through  
10 the math behind Exhibit A, how we got to the \$18 million.  
11 I'm happy to do that now. I'm happy to do that afterwards,  
12 if there are other questions.

13 THE COURT: Why don't you do that now?

14 MR. WALLACE: Great. Okay.

15 BY MR. WALLACE:

16 Q So Mr. Compagna, would you please flip to Exhibit A in  
17 your declaration, please, the chart you prepared?

18 A Okay. I'm there.

19 Q And I just want to walk through the math behind this  
20 declaration. So when you were trying to figure out the  
21 amount of stablecoin to propose to sell, what was the first  
22 step?

23 A The first step was we identified the quantum of  
24 stablecoin that the company had available. We primarily  
25 looked at what was available -- was in Fireblocks system,

1 essentially readily available deposited funds. We also  
2 looked at those available in the custody program.

3 Q Okay. So you mentioned funds on Fireblocks. Where is  
4 that shown on the chart here?

5 A The first -- under the blue box, the first two columns  
6 listed as main account show the quantity for each of the 11  
7 stablecoin types here and the U.S. dollars based on the  
8 conversion rates, the prices you see on the left that are on  
9 the main Fireblocks account.

10 Q So let's take a concrete example. Am I right in  
11 thinking that the first row relates to a coin called USDC?

12 A Correct.

13 Q And what is the amount of coin, of USDC, that Celsius  
14 had in its main accounts?

15 A It had 3.1 million coins and it's pretty much \$3.1  
16 million because they traded at -- stablecoins by nature are  
17 attempting to be pegged to the U.S. dollar, so you see 1.00  
18 is the purchase price.

19 Q And what is the amount of USDC that Celsius had in its  
20 custody account?

21 A 36.1 million.

22 Q Okay. So once you have that 3.1 million and that 36.1  
23 million, what did you do with those two figures?

24 A So we sum those together as roughly 39 -- a little over  
25 \$39 million and then we moved to look at what we call here

1 the reserve liabilities.

2 Q And what are those?

3 A The reserve liabilities incorporate three liabilities  
4 that Mr. Ferraro went over (indiscernible) it's liabilities  
5 under the custody program, so coins we owe back to  
6 depositors tagged as custody. The same for customers within  
7 the withheld, withheld accounts. And the third is  
8 collateral serving -- coins serving as collateral in our  
9 retail lending and institutional lending programs.

10 Q So in this USDC row, I see 44.6. What does that number  
11 mean?

12 A That represents the sum of those three potential  
13 obligations. So in the case of USDC, the roughly 39 million  
14 of stablecoin is less than 44 million in reserve  
15 liabilities. So when you move to the far right, the net  
16 current asset is zero and we're not proposing to sell any  
17 USDC stablecoin.

18 Q And can you just explain that to me? What does that  
19 mean, that the reserve liabilities are more than Celsius  
20 currently holds?

21 A It means when you look at the custody liabilities, the  
22 sum of the withheld liabilities and collateral -- potential  
23 collateral that needs to be returned, the company has more  
24 liabilities than they hold coin of that type.

25 Q So for a particular coin, if Celsius has more

1 liabilities than the coin they currently hold, is Celsius  
2 proposing to sell any of that stablecoin?

3 A No. We're not.

4 Q Is there an example where that is not the case, where  
5 Celsius has more than the reserve liabilities on this  
6 spreadsheet?

7 A Yes. The second line, USDT 20 shows, yeah, there's an  
8 area where we have excess.

9 Q And I don't want to walk through it in as much detail  
10 as we did for the first one. But can you just tell us the  
11 basic math that got you to the 16.4 million coins?

12 A Sure. If you look at the main accounts, there's  
13 roughly \$17.8 million worth of coin available. In the  
14 custody program, only 1.9 million of coin. So again,  
15 approaching \$20 million worth of coin held. And the reserve  
16 liabilities for that particular coin type are only \$3.3  
17 million. So there's an excess of 16.4 available.

18 Q Mr. Compagna, in total, how much stablecoin is Celsius  
19 proposing to sell?

20 A According to this page, 18.1 million.

21 Q Thank you, sir.

22 MR. WALLACE: Nothing further.

23 THE COURT: All right. Cross-examination?

24 MS. CORNELL: Hello, again. Shara Cornell, on  
25 behalf of the Office of the United States Trustee.

1 CROSS-EXAMINATION OF ROBERT COMPAGNA

2 BY MS. CORNELL:

3 Q Mr. Compagna, were you in the courtroom during the  
4 testimony of Christopher Ferraro earlier today?

5 THE COURT: Yeah. He was sitting here. Go ahead.

6 THE WITNESS: Yes.

7 BY MS. CORNELL:

8 Q Was there anything that he said that was inaccurate, to  
9 the best of your knowledge?

10 A No. (indiscernible) reviewed all of the  
11 (indiscernible).

12 Q When will the Debtors, on a consolidated basis, need an  
13 infusion of liquidity?

14 A I think that's -- I believe that's the end of the first  
15 quarter, the month of March.

16 Q Okay. What does an infusion of liquidity mean to you?

17 A The company needs to raise additional funds to continue  
18 paying the administrative (indiscernible) as well as the  
19 operation of the counsel in the case.

20 Q Will any of the individual Debtors not, on a  
21 consolidated basis, require an infusion of liquidity prior  
22 to March 2023?

23 A Yes. I believe so.

24 Q Which Debtors are those?

25 A The mining entities. I believe the mining entities

1 could use an infusion of liquidity late February timeframe.  
2 Early March or the close -- yeah, I think they may be one  
3 month earlier in February.

4 Q So on a consolidated basis, they won't need money until  
5 March. But the mining business will need money sooner.  
6 Will the proceeds from the sale of stablecoin today go to  
7 fund the mining business?

8 A The proceeds from the sale of stablecoin will go to the  
9 non-mining Debtors. From there, any further movement would  
10 require either a loan facility, debtor-in-possession  
11 financing from one -- from a parent to mining or something  
12 along those lines. So we're not -- we haven't really  
13 thought through that far at this point other than what I  
14 just laid out (indiscernible) --

15 Q On either a consolidated basis or an individual Debtor  
16 basis, are the projections you just provided taking into  
17 account the forthcoming Prime Trust settlement?

18 A No. They're not.

19 Q What about the DeFi payments?

20 A I believe they do take into account the DeFi payments.

21 Q For the record, can you explain the DeFi payments and  
22 what amount of liquidity that will bring into the estate?

23 A DeFi payments, the company had borrowings under certain  
24 DeFi protocols and the collateral posted because those --  
25 against those borrowings. So we pay off the loan, we get



1 the collateral back. The collateral is worth in excess of  
2 the amount of the DeFi borrowing. So put it in the category  
3 of good hygiene and especially in light of what we've seen  
4 with some of the failures, we're just trying to bring all of  
5 that collateral back to call it home, back to Fireblocks  
6 where we can better safe keep it.

7 THE COURT: It's a net benefit to the Debtors to  
8 pay off --

9 THE WITNESS: Yes.

10 THE COURT: -- the loans and get the collateral  
11 back.

12 THE WITNESS: Correct. The collateral is in coin,  
13 various coins. So they'll come back and be frozen. But  
14 yes, overall value-wise the Debtor will be better off.

15 BY MS. CORNELL:

16 Q Do your projections take into account the proposed sale  
17 of GK8?

18 A They do not.

19 Q Do you intend to create projections that include the  
20 sale of GK8?

21 A That would be a pretty simple update, just dropping in  
22 the net proceeds at the appropriate time. So we can  
23 certainly -- we certainly would take that into account once  
24 we have certainty on it and can do it at any time.

25 Q To the best of your knowledge, do the Debtors support

1 any non-Debtor entities' ongoing operations?

2 A Yes. There are certain non-Debtors part of the Celsius  
3 organization that don't have operations but provide  
4 services. Then there's the GK8 and (indiscernible) --

5 Q Where would we find that information?

6 A It's included in the cash flow projection.

7 THE COURT: Where would I find that? So the cash  
8 flow projections -- you're talking about the Trustee's  
9 Exhibit A that was just marked. You don't have a copy of  
10 it?

11 MS. CORNELL: I can give --

12 THE COURT: Why don't you give him a copy, if you  
13 would.

14 MS. CORNELL: May I approach, Your Honor?

15 THE COURT: Yeah. Go ahead. Just as sort of  
16 standing, you don't have to ask permission each time you  
17 approach a witness.

18 MS. CORNELL: I'm not wearing my mask. I don't  
19 want to --

20 THE COURT: You can just -- you can do it.

21 THE WITNESS: Your Honor, could I just ask for  
22 clarification on what actually came in as Exhibit A?  
23 Because there were two versions floating around.

24 THE COURT: I only know about one version.

25 THE WITNESS: Okay.

1 MS. CORNELL: It was dated November 15th.

2 THE WITNESS: It was dated November 15th. Okay.

3 Thank you.

4 THE COURT: It's three pages long.

5 THE WITNESS: Okay. Got it. Thank you.

6 THE COURT: You have that, Mr. Compagna?

7 THE WITNESS: I do, yes. And just to be clear, it  
8 starts the first week is October (indiscernible) --

9 THE COURT: Yes. Go ahead. Ask your question  
10 again.

11 MS. CORNELL: Sure.

12 BY MS. CORNELL:

13 Q What I'm looking to find on this is where payment to  
14 non-Debtor entities would be disclosed.

15 A Okay. So we do have a more detailed version of this  
16 with many more line items which would have this spelled out  
17 very specifically. I believe it's rolling up into the other  
18 operating disbursements line in this presentation here.

19 THE COURT: It's the third line under operating  
20 disbursements?

21 THE WITNESS: Correct.

22 BY MS. CORNELL:

23 Q On that third line of other operating disbursements, it  
24 looks as though come the end of December 2022, there'll be a  
25 change. Can you explain the change from 1501 to 936 and

1 then subsequently lower and lower in the first quarter of  
2 2023?

3 A I would really need to see the detailed sheet that  
4 builds up to these numbers.

5 Q Sure. That hasn't been provided to my office. Okay.

6 THE COURT: Well, when you say there's been a  
7 change, but if you look at the 4 November and 11 November  
8 (indiscernible) mostly below -- so I'm not quite sure of  
9 your point, Ms. Cornell, because for each of the periods,  
10 the amount of other operating disbursements varies.

11 MS. CORNELL: In particular I was curious about  
12 the change from December, which is 1,500, where it goes into  
13 the first quarter in 350. That seems like a dramatic  
14 change.

15 THE COURT: It's in millions. But anyway -- or  
16 thousands.

17 THE WITNESS: Thousands.

18 MS. CORNELL: Thousands.

19 THE COURT: Thousands.

20 MS. CORNELL: Yes. I know.

21 THE WITNESS: Yeah. Well that other operating  
22 disbursements line, I know when you're looking in the  
23 December weeks (indiscernible) insurance payments related to  
24 the mining business and some back taxes owed by the platform  
25 business. so that's why December is elevated and it likely

1 also includes, like I mentioned, the funding to the Israeli  
2 and GK8 entities and I think we have those tailing off  
3 (indiscernible) --

4 BY MS. CORNELL:

5 Q To the best of your knowledge, would the sale of  
6 stablecoin impact the potential in-kind distribution to  
7 creditors in this case?

8 A I don't think we're at the point of fully -- having  
9 fully laid out our thoughts as far as what in-kind  
10 distribution looks like, whether it's coin by coin or  
11 distribution of crypto in general. The company is short on  
12 many types of coin versus the deposits that were provided.  
13 So this selling stablecoin obviously means we do have less  
14 of those coins available to distribute.

15 But it is (indiscernible) as Mr. Ferraro had mentioned.  
16 You can always -- whether you borrow 18 million in some  
17 other fashion and need to repay that loan by selling  
18 something, coin, other assets, plus value to distribute. To  
19 the extent we sell the coin now and have excess cash, we can  
20 always rebuy the stablecoin later. In fact that's one of  
21 the reasons we're proposing to sell stablecoin in the first  
22 instance is because it's just that, meant to be stable and  
23 pegged to the U.S. dollar.

24 So you can trade it today, trade it tomorrow and it  
25 should be 18 million for 18 million as opposed to trading

1 bitcoin today and suddenly having it double in value and  
2 it's costly to replace it, if you will.

3 Q So based on your testimony just ow, if you were to sell  
4 it in February or March, it would still be 18 million for 18  
5 million. Is that correct?

6 A That's correct.

7 Q Okay. Have you done a liquidation analysis in this  
8 case?

9 A We have not.

10 Q Has anyone at Alvarez & Marsal done a liquidation  
11 analysis in this case yet?

12 A No. Not at this point.

13 Q Have you performed an analysis on the expense to file a  
14 plan?

15 A Not specifically, no. You mean just the cost of the --  
16 I'm not sure I follow.

17 Q The reorganization costs for filing a plan in this  
18 case.

19 A The restructuring activities line includes the  
20 professional fees largely that would be required to do that.  
21 The projections you see here go through January. We have  
22 these on a monthly basis through March at this point. So  
23 there is some component of the professional fees that would  
24 be related to getting the funding together and running the  
25 plan process.

1 Q If the Debtors do not sell stablecoin today, in your  
2 opinion, to what detriment will the Debtors be in if they  
3 were to do it in March instead?

4 A The Debtors are incurring administrative costs that  
5 they'd be in a position of not having adequate liquidity to  
6 cover. Looking forward, they'd have to take actions to  
7 curtail those costs or potentially administratively  
8 insolvent the case. So it just comes down to at what point  
9 do the Debtors have to take actions to avoid or minimize  
10 that potential administrative insolvency (indiscernible) --

11 THE COURT: Mr. Compagna, assuming that the Court  
12 grants the authority to sell 18 million in stablecoin, is it  
13 the Debtors' plan to sell it all now or use that authority  
14 to sell it as and when needed since essentially it remains  
15 stable?

16 THE WITNESS: I think we would intend to sell it  
17 now to put the cash balance sheet. But, you know, it's a  
18 fair point (indiscernible) --

19 MS. CORNELL: Just one minute.

20 BY MS. CORNELL:

21 Q Mr. Ferraro testified it earlier that he estimated the  
22 professional burn rate in these cases to be approximately  
23 \$15 to \$20 million. And you're looking to sell  
24 approximately \$18 million worth of stablecoin. If you were  
25 to sell and maintain the proceeds of that \$18 million, would

1 that just go --

2 THE COURT: I think he estimated \$15 to \$20  
3 million per month.

4 BY MS. CORNELL:

5 Q Per month. Would the sale of stablecoin -- how much  
6 runway would the sale of stablecoin provide you?

7 A I think there's a lot in there. I agree that the  
8 professional fee burn rate is about \$15 to \$20 million per  
9 month. Operationally, the platform business has done a  
10 really good job of managing liquidity. It's the case to  
11 date they've largely been able to break even. The mining  
12 business operationally has been break even to modestly  
13 positive. It's the capital costs. It's largely the capital  
14 costs and the professional fees that are leading to the cash  
15 burn, the capital costs on the mining side and professional  
16 fees for everything.

17 So, based on the professional fee burn rate, it's about  
18 one month of additional liquidity runway and I presume  
19 (indiscernible) through the capital spending on the mining  
20 side of the business, which we should be by the time we get  
21 to March. So one way of saying it, I tend to agree that \$18  
22 million buys about one month of additional runway here.

23 Q So come April, will you be looking to sell more  
24 stablecoin?

25 A It depends. Well, first, I don't think there'd be --



1 THE COURT: They don't have anything to sell.

2 THE WITNESS: The only way we'd be looking to sell  
3 more stablecoin is if -- the only way we could sell more  
4 stablecoin is if something happens with respect to the  
5 custody and withhold motions later this week. But yeah, as  
6 we forecast it here, there's no more stablecoin to sell. We  
7 also have the potential proceeds coming out of GK8 that  
8 could bolster liquidity. So we're looking at lots of paths  
9 that bolster liquidity.

10 MS. CORNELL: Okay. Thank you. That's it.

11 THE COURT: Thank you, Ms. Cornell. Anybody else  
12 wish to cross-examine? Any redirect?

13 MR. WALLACE: No redirect, Your Honor.

14 THE COURT: Thank you very much, Mr. Compagna.  
15 You're excused.

16 MR. WALLACE: Your Honor, I'm going to hand things  
17 off to my colleague, Grace Brier.

18 THE COURT: Okay.

19 MS. BRIER: Good morning, Your Honor. Grace  
20 Brier, Kirkland & Ellis, on behalf of the Debtors. At this  
21 time, Debtors call Mr. Oren Blonstein to the stand.

22 THE COURT: Thank you. Mr. Blonstein, come on up.  
23 If you would raise your right hand and be sworn.

24 CLERK: Do you solemnly swear or affirm that the  
25 testimony you're about to give the Court will be the truth,

1 the whole truth and nothing but the truth?

2 MR. BLONSTEIN: I do.

3 THE COURT: Please have a seat.

4 DIRECT EXAMINATION OF OREN BLONSTEIN

5 BY MS. BRIER:

6 Q Please introduce yourself to the Court.

7 A Hi. My name is Oren Blonstein.

8 Q And Oren, can you tell the Court a bit about yourself?

9 A Sure. I'm the head of innovation and chief compliance  
10 officer for Celsius Network.

11 Q How long have you been at Celsius?

12 A I joined the company in February 2021.

13 Q And can you talk us through the roles that you've had  
14 since you've been at Celsius?

15 A Sure. When I was hired, I started as head of  
16 innovation, which was largely around formulating the  
17 strategies for releasing new products for the company. In  
18 September of 2021, I was appointed that the chief compliance  
19 officer.

20 Q And before joining Celsius, what's your professional  
21 background?

22 A I spent a little bit over a decade working for a  
23 traditional financial services provider. The company was a  
24 regulated FINRA broker-dealer. We had international  
25 businesses that were -- operated ETSS and dark pools and

1 things like that. In 2016, I started working part-time in  
2 crypto at that same traditional financial services firm.  
3 And since 2019, I've been full-time in crypto.

4 Q And how did you first become involved with Celsius?

5 A So in the fall of 2019, I started to become personally  
6 active in decentralized finance, playing around with the  
7 different decentralized finance protocols, just trying to  
8 understand them, learn them.

9 In late 2019, my wife and I had our first child. Time  
10 got very precious, and I didn't have enough time to really  
11 manage those activities anymore. Earlier in 2019, when I  
12 was at (indiscernible) US, we had that literal water cooler  
13 moment where a bunch of employees were standing around  
14 talking about what we do with our crypto. And an employee,  
15 one of my colleagues mentioned Celsius, and in the spring of  
16 2020, I became a customer.

17 Q So you were a customer before or after you joined  
18 Celsius as an employee?

19 A I was a customer before. And with the -- the concept  
20 to finish that last thought was that not having enough time  
21 to manage the DeFi stuff that I was using to generate yield  
22 on my crypto, Celsius looks like a simpler alternative, a  
23 way for me to save time.

24 Q Why did Celsius look like a simpler way to save time in  
25 that space when you were a customer?

1 A It's very complicated to manage your own crypto,  
2 especially using decentralized finance. There's the wallets  
3 that you use, software wallets, hardware wallets. There's  
4 the actual transactions of interfacing with the different  
5 protocols approving the transactions. It's very costly to  
6 do that as an individual. And then in general, there's also  
7 like a tax consequence.

8 So every time you're making a transaction in  
9 decentralized finance, that's basically a tax flow that  
10 could be a taxable transaction. And so for me, instead of  
11 having to manage all of those different things, I could  
12 transfer my coins to the company and earn a lower rate than  
13 if I managed it myself, but a very competitive rate.

14 Q And how did you come to understand how those tax  
15 consequences would work when you were a customer of Celsius?

16 A The only tax consequences as a customer of Celsius that  
17 I was aware of was paying tax on the interest that I earned  
18 for the yields, the rewards that I earned from Celsius.

19 Q And did you review the terms of use when you were a  
20 customer to help understand that concept?

21 A I did. Because a lot of my experience in general has  
22 been around product development, one of the things,  
23 especially in consumers reporting to financial services that  
24 you do to try to understand a company is you can look at  
25 their website and that will tell you how they're marketing

1 the service. But if you click on the terms of use, you can  
2 see what kind of licenses they hold, what partners they work  
3 with, how the service is actually delivered, what your  
4 agreement with the company is. So I was used to kind of  
5 clicking on those things, reading through them in detail to  
6 understand them.

7 So by the time that I became a customer, I do remember  
8 I certainly didn't scrutinize it the way I have the last few  
9 weeks. But I do remember looking at it and thinking about  
10 the fact that I was essentially giving control of my coins  
11 away to the company, because up until that point, I had been  
12 managing it myself. But again, with thinking about the  
13 time, thinking about the resources, the tax implications, I  
14 made the decision to transfer my coins to the company.

15 Q And at this time, I'd like to turn to the substantive  
16 testimony that you're going to offer here today.

17 MS. BRIER: Your Honor, may I approach the witness  
18 with his declarations?

19 THE COURT: Certainly.

20 BY MS. BRIER:

21 Q Mr. Blonstein, what have I just handed you?

22 A So one of the documents is my original declaration on  
23 the terms of use and the ownership of Earn assets and the  
24 sale of stablecoin. That's my first declaration. And then  
25 the second one is the supplemental declaration that goes

1 into more details on the acceptance of terms of use from  
2 Version 6 and on.

3 Q Okay. So taking those one at a time, I'd like to talk  
4 first about your original declaration, which was Docket  
5 Number 1327. Do you have that one in front of you?

6 A I do.

7 Q And is that your signature at the end of the substance  
8 of your declaration on Page 9?

9 A Yes. This is my electronic signature.

10 Q And does this exhibit include the exhibits that were  
11 attached to your original declaration when it was filed in  
12 November 2022?

13 A Yes. It does.

14 Q And is the testimony contained within your declaration  
15 true and accurate, to the best of your knowledge?

16 A It is.

17 Q Do you adopt this document, Exhibit Document Number  
18 1327, as your affirmative testimony under oath today?

19 A I do.

20 Q Okay. Let's turn to your supplemental declaration,  
21 Docket Number 1584. Is this a true and accurate copy of the  
22 declaration that you signed and submitted on December 2,  
23 2022?

24 A It is.

25 Q Is that your signature on Page 9 of that document?

1 A Same electronic signature.

2 Q And is the testimony contained in your supplemental  
3 declaration, Docket 1584, true and accurate to the best of  
4 your knowledge?

5 A It is.

6 Q Do you adopt the testimony within your supplemental  
7 declaration as your testimony under oath today?

8 A I do.

9 MS. BRIER: Your Honor, at this time, we'd move  
10 into evidence Docket Number 1327 and Docket Number 1584.

11 THE COURT: Are there any objections to either  
12 declaration? Hearing none, both are admitted into evidence.

13 MS. BRIER: And Your honor, just for purposes of  
14 the record to be clear, I'd also like to admit all of the  
15 exhibits contained therein to his declaration into evidence  
16 as well.

17 THE COURT: All right. Let's take the first one  
18 first. The first declaration, ECF 1327, has a group of  
19 exhibits attached. They're in the bound copy of it. They  
20 are all part of that same ECF docket number. Are there any  
21 objections to the exhibits that are attached to Mr.  
22 Blonstein's first declaration? All right. Hearing none,  
23 those are in evidence. And again, with respect to the  
24 second declaration, they're part of the same ECF docket  
25 number. Are there any objections to the exhibits to Mr.

1 Blonstein's declaration? Hearing none, there in evidence as  
2 well.

3 MS. BRIER: Thank you. And I'd like to approach  
4 the witness with one more exhibit.

5 THE COURT: Yeah.

6 MS. BRIER: It's a big binder. I have an extra  
7 one that I can bring up as well.

8 THE COURT: I've got a lot of binders up here. Do  
9 I have -- do I have that yet?

10 MS. BRIER: You actually do not. So I will bring  
11 this one up.

12 THE COURT: Okay.

13 MS. BRIER: Sorry. Thank you.

14 BY MS. BRIER:

15 Q Mr. Blonstein, is what I just handed you Exhibits A-1  
16 through A-8 and redlines from Exhibits A-1 through A-8 that  
17 were attached to Mashinsky declaration?

18 A Yes.

19 THE COURT: I'm sorry. They were attached to  
20 what? Mashinsky's declaration?

21 MS. BRIER: They were.

22 THE COURT: Yeah. Okay.

23 BY MS. BRIER:

24 Q And Mr. Blonstein, are these the same exhibits that you  
25 described reviewing in your declaration, your original



1 declaration on Page 3, Paragraphs 4 through 11?

2 A Yeah. I mean, without checking all the pages, but  
3 yeah, it appears. Yes.

4 MS. BRIER: And Your Honor, we'd --

5 THE COURT: Let me -- just so I understand, I had  
6 entered an order early in the case requiring the Debtors to  
7 file on ECF each version of the terms of use that were in  
8 effect -- I don't remember what the earliest date I used.  
9 But in response to that order, the Mashinsky declaration,  
10 ECF Document Number 393 was filed that attached what was  
11 described as each version of the terms of use. Is that what  
12 you put before me? Not the Mashinsky declaration, but the  
13 exhibits that were attached to that Mashinsky declaration?

14 MS. BRIER: That's exactly right, Your Honor.  
15 They're the exhibits that were attached to the Mashinsky  
16 declaration that Mr. Blonstein reviewed as part of his own  
17 declaration process.

18 THE COURT: is that correct, Mr. Blonstein? You  
19 reviewed these exhibits, A-1 through A-8, that had the  
20 different versions of the terms of use? Is that correct?

21 THE WITNESS: I did.

22 THE COURT: Okay.

23 MS. BRIER: And Your Honor, at this time, we'd  
24 move to admit these exhibits into evidence.

25 THE COURT: Well, when you say you're moving to

1 admit in evidence ECF Docket Number 393, Exhibits A-1  
2 through A-8, which are pages within the ECF docket number,  
3 they're Pages 14 through 679.

4 MS. BRIER: That's exactly right, Your Honor.

5 THE COURT: The actual attachments to the  
6 Mashinsky declaration went through Page 1126.

7 MS. BRIER: Yes.

8 THE COURT: What was 680 through 1126?

9 MS. BRIER: They were other documents, Your Honor,  
10 that Mr. Blonstein did not review as part of his declaration  
11 process. So there were other types of terms of use that  
12 were included there that are not the original terms of use,  
13 A-1 through A-8, that are included in this excerpt from his  
14 declaration.

15 THE COURT: I mean, I can open it and look. But  
16 are you able to describe to me generally what Pages 680 to  
17 1126, what exhibits those comprised?

18 MS. BRIER: So some of those are versions of the  
19 terms of use folks would have signed if they signed up for a  
20 different program or a different part of the process. The  
21 ones that we're submitting are just the standard terms of  
22 use that every customer had to sign before they signed up  
23 for the platform.

24 THE COURT: And you're offering these in evidence?

25 MS. BRIER: Yes, Your Honor.

1 THE COURT: Are there any objections?

2 MS. CORNELL: Your Honor, I'm sorry. This is  
3 Shara Cornell, again, on behalf of the Office of the United  
4 States Trustee. I don't have a copy. Are they looking at  
5 the evidence the Mashinsky declaration or the attachments?

6 THE COURT: The attachments. And then, just to be  
7 clear, it's not all of the attachments to the Mashinsky  
8 Declaration. As I pointed out, these exhibits that they're  
9 offering are Pages 14 through 679. The actual attachments  
10 to the Mashinsky declaration went through Page 1126.

11 MS. CORNELL: But the declaration itself is not  
12 included in there?

13 THE COURT: The declaration is not itself there.

14 MS. BRIER: That's correct.

15 MS. CORNELL: Okay. Thank you. Then no  
16 objection, Your Honor.

17 THE COURT: All right. Then the Court is  
18 admitting into evidence the -- in a binder, it's ECF Docket  
19 Number 393, Pages 14 through 679 of that ECF filing. Okay.  
20 That's admitted into evidence.

21 MS. BRIER: And Your Honor, at this time, with Mr.  
22 Blonstein's affirmative testimony that's accepted and  
23 adopted under oath, I'm happy to pass a witness, or I can  
24 put some affirmative testimony into the record now or on  
25 redirect, whenever Your Honor would prefer.

1 THE COURT: Well, what is it that you want? I  
2 mean, his two declarations are in evidence. Is there  
3 anything beyond that? You've asked about his background and  
4 that's all in. Is there something else you wanted to cover  
5 now?

6 MS. BRIER: Your Honor, I'm happy to cover any of  
7 it on redirect as necessary.

8 THE COURT: Okay. All right. I do have a couple  
9 of questions before cross-examination. What is your  
10 background in compliance?

11 THE WITNESS: So most of my professional career  
12 was around product development operations, general  
13 management. The company that I've worked for, for 12 years,  
14 the traditional financial services provider, like I said,  
15 was a regulated broker-dealer. So we underwent audits and  
16 examinations by different regulators.

17 Prior to working full-time in cryptocurrency, that  
18 was kind of the extent of me touching regulations or  
19 compliance. When in 2019, when I started working full-time  
20 in cryptocurrency, I became the CEO of an exchange, a  
21 cryptocurrency exchange. And how I explain this is that as  
22 I was signing the documents to become the CEO and control  
23 person of the company --

24 THE COURT: It helps to know what it's about.

25 THE WITNESS: Exactly. So that was exactly my

1 thought process is although I had -- I was learning very  
2 quickly what it meant to be a counterparty to trades in  
3 cryptocurrency and the rules that applied, I felt like I did  
4 not have sufficient knowledge at that time. So I hired a  
5 compliance advisory that I basically spent the next six  
6 months or so getting up to speed, very rapid, I would say  
7 very rapidly. In that timeframe, from around mid-June '21,  
8 I did a couple of things which I think really --

9 THE COURT: Well, I wrote down a note that you  
10 became chief compliance officer in February 2021. Is that  
11 correct?

12 THE WITNESS: February 2021 was when I was hired  
13 for Celsius.

14 THE COURT: Okay.

15 THE WITNESS: September 2021 was when I became the  
16 interim -- the chief compliance officer. What I was just  
17 talking about before was I became the CEO and interim chief  
18 compliance officer for that other cryptocurrency exchange.

19 THE COURT: Who was the chief compliance officer  
20 for Celsius before you became the chief compliance officer?

21 THE WITNESS: A gentleman named Jeremie Beaudry.  
22 He was the general counsel and chief compliance officer.

23 THE COURT: Is he still with the company?

24 THE WITNESS: No.

25 THE COURT: Did he leave the company when you

1 became the chief compliance officer?

2 THE WITNESS: He was in the process of -- I think  
3 he was actually gone by the time I became the chief  
4 compliance officer. I knew enough about compliance  
5 obligations under the Bank Secrecy Act to --

6 THE COURT: Tell me what your responsibilities are  
7 as chief compliance officer of Celsius.

8 THE WITNESS: Our primary regulator is FinCEN, the  
9 Financial Crimes Enforcement Network, Department of the  
10 Treasury. We're required as a (indiscernible) to comply  
11 with the Bank Secrecy Act, and also OFAC sanctions laws  
12 generally. I saw that as my primary obligation to make sure  
13 that the company was in full compliance there.

14 And that's what I spent the vast majority of my  
15 time. And I can appreciate -- I mentioned this in my  
16 deposition, that a lot of people might say chief compliance  
17 officer should be responsible for a lot of different things.  
18 That's not what I was doing in that role. And then that was  
19 clear to my managers and I'd say throughout the firm that I  
20 wasn't covering other areas that some chief compliance  
21 officers might --

22 THE COURT: Tell me again what were the areas that  
23 you were covering as chief -- well, still are, as chief  
24 compliance officer and if they've changed since September  
25 2021, tell me that.

1 THE WITNESS: All aspects of compliance with the  
2 Bank Secrecy Act as a mining services business. So that  
3 meant making sure that we have the SAML program, that we had  
4 a team that was adequately staffed. When I joined -- or I  
5 ended up tripling the size of the team when I joined, just  
6 based on the workload that we have, making sure that we have  
7 the right -- so customer identification program, VSAML,  
8 training program for our staff, making sure that we're in  
9 compliance with the Bank Secrecy Act reporting, the account  
10 sanctions reporting that we need to do, that we need to do.  
11 Responding to regulators like FinCEN. We had a Title 31  
12 exam. We had an OFAC exam.

13 So those are kind of the -- there's a tremendous  
14 amount of work that goes into making sure that the  
15 technology infrastructure to support the compliance  
16 operations is working properly, and obviously lots of checks  
17 that the actual procedures and policies that we have in  
18 place are being carried out.

19 THE COURT: Have you read the examiner's interim  
20 report?

21 THE WITNESS: I read parts of it.

22 THE COURT: So one of the issues that the  
23 examiner's interim report raises and certainly may be  
24 relevant to the custody and withhold during later this week,  
25 it is Celsius's recordkeeping with respect to the movement

1 of coins into custody, whether it was a shortfall or what --  
2 was that an area of your responsibility?

3 THE WITNESS: It was definitely not. So the  
4 movement of coins was absolutely not an area. That's not  
5 something that the bank -- you know, movements of money  
6 inside the company generally were not something that I was  
7 supervising at all. I'm aware of it. I have a little bit  
8 more exposure to the custody project because of my role in  
9 innovation, because custody was kind of a starting point for  
10 a lot of the new products and services we were planning on  
11 offering.

12 But yeah, I remember the section, I think, that  
13 you might be referring to where it was kind of stated as a  
14 surprise. How could the chief compliance officer not be  
15 aware of the amounts of money between accounts inside the  
16 company? And I would say, I mean, how many job descriptions  
17 of the chief compliance officer has that person as the  
18 examiner written, right? I mean, I've written several as  
19 CEO to companies, and I've performed the job function.

20 I don't know many CCOs who supervise coin  
21 movements between accounts internally at the company.  
22 There's a treasurer for that. There's a finance department.  
23 There are other people. So I didn't agree with that  
24 conclusion or their assertion.

25 THE COURT: You didn't agree that Celsius -- you



1 believe Celsius did keep accurate track of the movement of  
2 coins?

3 THE WITNESS: No, I didn't -- I didn't agree.

4 THE COURT: When you say you disagree, you're not  
5 disagreeing with her conclusion that Celsius did not keep  
6 accurate track of the movement of coins.

7 THE WITNESS: One hundred percent, I agree with  
8 that --

9 THE COURT: Okay. All right.

10 THE WITNESS: I disagree with the assertion that I  
11 had some obligation there.

12 THE COURT: Okay. All right. Cross-examination?  
13 You're excused. Thank you very much.

14 MS. MILLIGAN: Your Honor, this is Layla Milligan.  
15 May I ask the witness a few questions?

16 THE COURT: Oh, yes.

17 MS. MILLIGAN: I apologize. I was waiting for Ms.  
18 Cornell to stand up.

19 THE COURT: That's fine.

20 MS. MILLIGAN: I just --

21 THE COURT: So introduce yourself, Ms. Milligan,  
22 so that Mr. Blonstein knows -- he may know who you are  
23 already. I don't know. Maybe you questioned during his  
24 deposition. But go ahead.

25 MS. MILLIGAN: Thank you, Your Honor. Layla

1 Milligan, with the Texas Attorney General's Office,  
2 appearing on behalf of the Texas State Securities Board and  
3 the Texas Department of Banking.

4 CROSS-EXAMINATION OF OREN BLONSTEIN

5 BY MS. MILLIGAN:

6 Q Good morning, Mr. Blonstein.

7 A Nice to meet you.

8 Q I have a few just follow-up questions. You are not a  
9 licensed attorney. Is that correct?

10 A That is correct.

11 Q Did you personally play any role in the drafting of any  
12 of the versions of terms of use?

13 A I did not personally play a role in any of the terms of  
14 use.

15 Q Did you -- I'm sorry to interrupt.

16 A Yeah. I was going to say there may be cases where I  
17 provided input on certain sections not as the chief  
18 compliance officer, but as the head of innovation. For  
19 example, we launched two new products, two products from the  
20 innovation and product team. One was the swap product. One  
21 was the buy coins product.

22 For those products, I was consulted about terms of use,  
23 mostly in terms of flow funds and things like that, but not  
24 in my compliance capacity. And I wasn't answering any  
25 questions. Nobody was coming to me with questions about

1 legal or regulatory questions. It was more to understand  
2 the product and service offering.

3 Q Okay. So just to be clear, regarding the swap  
4 transactions or projects that you just mentioned, people  
5 were coming to you about the terms of use, but not for  
6 compliance or regulatory role, but just for information  
7 about the product. Is that what you just said?

8 A That's correct. Yeah. In those two cases. And we  
9 were in the process of doing something similar for the  
10 credit card that we were planning to launch.

11 Q Did you have any or play any personal role in obtaining  
12 customer consents to the terms of use in effect at different  
13 times?

14 A I didn't -- sorry, I did not.

15 Q It is your understanding that the company has the  
16 ability to track which terms of use individual or industrial  
17 consumers, participants signed or clicked agree to?

18 A Yes. We have software that was internally developed  
19 called Back Office. We call it internally our Back Office  
20 system. That system tracks essentially all user activity,  
21 all customer activity on the platform, including the  
22 acceptance of the terms of use.

23 Q Has that information been produced to any party in this  
24 case?

25 A My understanding is yes. It was in my original

1 declaration. We provided (indiscernible) information in an  
2 aggregate form and some of the tables in my original  
3 declaration. So we showed --

4 THE COURT: Hold on. Anybody who is connected  
5 over Zoom, other than Ms. Milligan, needs to mute their line  
6 so as not to interrupt the hearing. Go ahead, Ms. Milligan.

7 MS. MILLIGAN: Thank you, Your Honor.

8 BY MS. MILLIGAN:

9 Q Is it your testimony, Mr. Blonstein, that the  
10 documentation of which terms of use the individual investors  
11 clicked, that information, not in aggregate form, but the  
12 specific information for each investor and the terms of use  
13 they clicked or assented to has been produced to any party  
14 in this case?

15 A I'm not aware. If that has been provided, I'm not  
16 aware of it. I may be missing it. I may have missed that  
17 detail. But I know about the aggregated summaries, and I've  
18 seen the data firsthand myself, the underlying data.

19 Q Did you play any role in gathering that data  
20 personally?

21 A I worked with the data team. I mean, I was on the  
22 email threads. I did work with the data team on it. There  
23 were other individuals that were also working with the data  
24 team to request this information. So subsequently I talked  
25 to them about how they gathered it to get an understanding

1 of, like, the queries that they wrote to extract the data,  
2 just to make sure that what they gathered would line up with  
3 me, with my understanding of how they would get that  
4 information.

5 Q Okay. So you worked with a team of individuals who  
6 actually gathered the data, and you got the information from  
7 them. You didn't personally play a role in the gathering of  
8 that data.

9 A That's correct. Yeah. (indiscernible) like SQL  
10 queries.

11 Q Okay. In your role as chief compliance officer, to  
12 your knowledge, at any point was Celsius in compliance with  
13 state or federal securities law?

14 A That was not my area. So, I mean, like I was  
15 mentioning just before, I focused on our obligations as a  
16 money services business, and the serious matters were not in  
17 my wheelhouse.

18 Q To your knowledge, as chief compliance officer, was  
19 Celsius at any point in compliance with state or federal  
20 money transmissions laws?

21 A This was -- I mean, this was definitely discussed with  
22 counsel. So I'm not sure if --

23 Q I'm not asking for your -- I'm not asking, just to  
24 clarify, your communications with counsel. I'm asking for  
25 your understanding. To your knowledge, as chief compliance

1 officer, was the business ever in compliance with money  
2 transmissions laws?

3 MS. BRIER: Your Honor, I'd caution the witness  
4 that if his knowledge is based on discussions with counsel  
5 or --

6 THE COURT: He can answer. The question did not  
7 call for attorney-client privilege. He can answer the  
8 question.

9 MS. BRIER: Thank you, Your Honor.

10 THE WITNESS: My understanding, based on  
11 discussions, was that we were in compliance.

12 BY MS. MILLIGAN:

13 Q With money transmissions laws? Just to be clear.

14 A Yes.

15 Q Okay. But you are not aware of whether the company was  
16 in compliance with state or federal securities laws?

17 A That's correct.

18 MS. MILLIGAN: Okay. Your Honor, I have no  
19 further questions. Thank you.

20 THE COURT: Thank you. Ms. Milligan. Any other  
21 cross-examination?

22 MS. CORDRY: Yes, Your Honor.

23 THE COURT: Yes. Ms. Cordry?

24 MS. CORDRY: Yes. Karen Cordry. I'm bankruptcy  
25 counsel for the National Association of Attorneys General.

1 Thank you, Your Honor, for being able to appear this  
2 morning.

3 CROSS-EXAMINATION OF OREN BLONSTEIN

4 BY MS. CORDRY:

5 Q I just have a few very short questions for you, Mr.  
6 Blonstein, which I think are matters that I think I've  
7 gathered from what you said, but I just really want to  
8 clarify that these are correct.

9 First of all, you have introduced the various terms of  
10 uses and that they were posted on the website. When they  
11 were posted, were they posted just as a clean version, each  
12 one a new, complete, clean version?

13 A To my knowledge, yes.

14 Q Okay. Was a blackline ever posted on the website at  
15 the same time.

16 A Just to clarify? Blackline --

17 THE COURT: Showing the changes from --

18 BY MS. CORDRY:

19 Q One that shows the changes --

20 A Okay. I refer to those as redlines.

21 Q Okay. Redlines, blacklines, whatever color --

22 THE COURT: Well, you know, when you print them  
23 out on a black and white printer, they look black. If you  
24 look at them on a screen, they could be colored. But --

25 BY MS. CORDRY:

1 Q Whatever color they are, were there any ones that  
2 showed the editing, an edited version that showed what  
3 changes had been made?

4 A Not to my knowledge. I do know that on multiple  
5 occasions of these updates, we tried to post some of the key  
6 changes to the terms on the main screen that we presented to  
7 users.

8 Q And those changes are part of the attachment to your  
9 supplemental declaration, are they not? They're shown  
10 there?

11 A That -- sorry. That's correct.

12 Q Did any of those actually point out to anybody that  
13 changes were being made in the ownership, in the terms of  
14 use relating to the ownership of those assets?

15 A I don't remember those being called out. Then I would  
16 say that that's correct because from my perspective as a  
17 customer, there's been no material change in the  
18 relationship between the company and its customers as far as  
19 the ownership of the assets that they sent to the company.

20 THE COURT: Let me -- I'm not sure I understand  
21 your answer. Did the updated terms of use point out changes  
22 with respect to ownership or title of crypto assets, yes or  
23 no?

24 THE WITNESS: No. That was not called out.

25 THE COURT: Okay. Ms. Cordry, ask your next



1 question.

2 MS. CORDRY: Sure.

3 BY MS. CORDRY:

4 Q Were the prior versions left on the website if someone  
5 wanted to compare between version six and version seven,  
6 let's say.

7 A Not to my knowledge.

8 Q Okay. So if someone tries to actually determine what  
9 changes have been made, they would have to try to remember  
10 in their own head what the prior document said and then read  
11 a 55-page document and try to figure out what changes were  
12 made. Would that be fair to say?

13 A Yes. That is fair to say.

14 Q Okay. Was there ever any attempt to reconcile what was  
15 being said in the terms of use, the written terms of use  
16 document with what Mr. Mashinsky was saying on his  
17 broadcasts?

18 A I was not involved in any kind of reconciliation of  
19 those things. That was more matter for our in-house  
20 counsel, what we call our legal and regulatory team.

21 Q Have they put any information into the record in this  
22 case as to what Mr. Mashinsky was saying on those broadcasts  
23 at the same time these terms of uses were being changed?

24 A We have so many requests from different parties about  
25 related to the AMAs and other kind of marketing statements.

1 I'm not sure whether those are part of the Chapter 11, this  
2 case, or just regulator inquiries. So I'm not sure.  
3 Someone else may know about what's been submitted. I mean,  
4 the things that I'm the most familiar with about this case  
5 are my declarations.

6 Q Do you expect that every customer actually read the  
7 entire terms of use every time they were changed?

8 A It's difficult for me -- it's difficult for me to guess  
9 about that. As a customer, there are some services where  
10 when it's a material -- when it's important, I make sure to  
11 read it in the new terms of service. When I think it's less  
12 important, I don't.

13 And so each user, each customer, each person has to  
14 make that decision on their own. And so I'm not -- you  
15 know, I would expect some customers -- some customers may  
16 not have read it thoroughly. But what I can tell you is  
17 that every single one of our customers checked that box that  
18 said they agreed to the terms of use, and if they didn't, we  
19 wouldn't have allowed them to use the services.

20 Q Right. So to be able to access their coins, they had  
21 to check that box, whether or not they read all 55 pages or  
22 not, correct?

23 A That's correct.

24 Q Did you read all 55 pages every time the terms of use  
25 changed?

1 A Definitely not.

2 Q And you said you might read it if it was something  
3 important changing. Would there be a way the customer would  
4 know what was being changed and whether it would be of  
5 importance to them or not?

6 A We called out -- in terms of the exhibits, you know,  
7 show what we thought were the most consequential changes to  
8 the terms of use.

9 Q Okay. So we can look at those changes, and those are  
10 the only ones that a customer would be aware of as being  
11 what you viewed as significant changes to the document, you  
12 meaning Celsius.

13 A They could be -- so if your question is would they be  
14 aware of the changes between the versions, yeah, I agree.  
15 We called out what we thought was the most consequential  
16 changes.

17 Q And I think in listening to your deposition, both  
18 originally and in the supplemental deposition that was taken  
19 last week, you were repeatedly asked to give your  
20 interpretation of certain provisions of the terms of use.  
21 Is that correct?

22 A Yes.

23 Q And would it be fair that you repeatedly said you're  
24 not a lawyer, you didn't draft them, it's hard for you to  
25 really be able to give a definitive interpretation?

1 A That's correct.

2 Q Is it also fair to say that these lay customers were in  
3 the same position? They aren't lawyers. They didn't have  
4 anything to do with drafting those documents.

5 A I mean, I'm sure we had some customers that were  
6 lawyers. But yeah, generally I don't expect all of our  
7 customers to be attorneys.

8 Q So if you had difficulty with deciding how to interpret  
9 them, would you assume that those lay customers who were in  
10 the same position or worse than you were would have also  
11 difficulty in interpreting those terms of use?

12 A I think when you sign up for a service and you agree to  
13 the terms of service, it's not really fair after the fact to  
14 say, oh, I didn't read that, or I'm going to focus on this  
15 part in terms of service versus another part. When you  
16 click that box, you accept the terms of service and --

17 Q Yes. But my question is not did you read the whole  
18 terms. My question is, having read them, if there was  
19 difficulty in interpreting them, which you yourself said in  
20 your deposition you had difficulties, would that not be  
21 equally applicable to the customers having difficulties  
22 understanding what those terms of use meant?

23 A I think if I said that verbatim, what I was trying to  
24 convey was that -- was maybe one of two things. One was  
25 that I may have had a difficult time understanding the point

1 the person was making or the question the person was asking.  
2 The second thing is that it can be difficult to review just  
3 different snippets from the terms of use versus viewing the  
4 document in its entirety. So without review, when I'm asked  
5 to review one sentence here, one sentence there, and then  
6 construct some kind of overarching view on the terms of  
7 views, I think that's challenging for anyone.

8 Q If in the same sentence it says, I'm loaning you my  
9 assets and I'm also transferring my assets to you, would you  
10 consider that a confusing sentence?

11 A No.

12 Q You don't consider that there's any confusion between  
13 loaning somebody something and transferring it to them in  
14 the sense that you all are asserting that this is a full  
15 transfer of ownership?

16 A I mean, from my view, when I read those statements,  
17 when I view the entirety of those statements and the  
18 agreement, they seem to be in sync.

19 Q Why did Celsius continue to use the phrase that you are  
20 loaning us the assets in numerous places throughout the  
21 document, if, in fact, your position is that they were  
22 transferring them to you in their totality?

23 A I wasn't involved in the drafting of that. So I don't  
24 know what the basis for making that decision was.

25 Q So if a customer read over and over again that they

1 were loaning their documents, they would have no reason to  
2 know also any more than you why then it would say that they  
3 were transferring their assets?

4 A I'm sorry. Can you say that question again?

5 Q Okay. When you said you don't know why it continues to  
6 say in the terms of use that they're loaning their assets to  
7 Celsius. It says that on several occasions, does it not?

8 A I believe so.

9 Q Okay. And you don't know why it continues to say that,  
10 even while you're now arguing that, in fact, there was a  
11 full transfer of ownership, correct?

12 A I'm saying that there were attorneys that were --  
13 multiple attorneys inside and outside the company that were  
14 involved in drafting that. I relied on them to come up with  
15 the reasoning for why that language was added. That wasn't  
16 something -- I had a lot of other stuff on my plate. So  
17 that wasn't something that I was trying to figure out.

18 Q If any of the borrowers were confused about these  
19 written terms of use, do you think they would listen to Mr.  
20 Mashinsky's broadcast to try to understand better what was  
21 going on with their assets?

22 A That's reasonable.

23 Q So it would be reasonable to also look at what he said  
24 in context with the terms of use to try to understand what  
25 customers actually understood and appreciated when they were

1 making these transfers, correct?

2 A I agree. Although from personal experience, like, if  
3 you're buying a car, you don't just listen to the salesman.  
4 You know, you read the contract.

5 Q But I would hope the salesman would say something that  
6 was consistent with the contract, would I not?

7 A Yeah. I would hope so too.

8 Q And I guess it's my last question here. You talked  
9 about that one of the reasons you started investing with  
10 Celsius was because you had to deal with various financial  
11 tax consequences if you were making your own trades with  
12 your investments. Is that correct?

13 A That's correct.

14 Q When you transferred your assets to Celsius under these  
15 terms of use, was that a taxable event? Was that reported  
16 to the IRS?

17 A So I do remember in the terms of use, there was a  
18 section that talked about what the tax obligations were, and  
19 it primarily revolved around reporting the interest paid to  
20 me, not related to the transfer.

21 Q So in that respect, this would be different than if you  
22 were selling these to a third party when you would have had  
23 to make that kind of report to the IRS, correct?

24 A I'm not a tax expert, but I think you're right.

25 MS. CORDRY: Okay. All right. I have no further

1 questions.

2 THE COURT: Thank you very much, Ms. Cordry. Any  
3 other cross-examination? Any redirect?

4 MR. HERRMANN: Yes. This is Immanuel Herrmann. I  
5 can -- I have some brief questions.

6 THE COURT: Go ahead, Mr. Herrmann.

7 CROSS-EXAMINATION OF OREN BLONSTEIN:

8 BY MR. HERRMANN:

9 Q All right. So I just had a few follow-up brief  
10 questions for you, Mr. Blonstein. One is that you joined as  
11 a customer in the spring of 2020, correct?

12 A That's correct.

13 Q And at your first deposition, you said you reviewed the  
14 initial terms of service at that time and that you were  
15 giving up ownership, correct?

16 A Correct.

17 Q Until September 20th, the terms of service didn't  
18 mention change of ownership. So I just wanted to confirm in  
19 court that you read the terms of service, version four, when  
20 you signed up and that you read it as giving up title to  
21 your assets.

22 A I did. I mean, I can confirm that I did, and I believe  
23 it is in version -- in both version one and two of the terms  
24 of use that were in effect. I can go through and try to  
25 find the relevant session if you'd like.



1 THE COURT: Just answer the questions.

2 THE WITNESS: Okay.

3 THE COURT: Go ahead, Mr. Herrmann.

4 BY MR. HERRMANN:

5 Q All right. Is Earn a security?

6 THE COURT: I'm sorry. I didn't understand your  
7 question, Mr. Herrmann?

8 BY MR. HERRMANN:

9 Q Is Earn a security? Are Earn deposits a security? Are  
10 they something resembling a trade or a purchase for a  
11 security?

12 A I'm not an attorney. I've already explained my  
13 background as chief compliance officer. That's not the area  
14 that I focus on. That's not something I have any kind of  
15 specific knowledge of. So I'm not in a position to answer  
16 that question.

17 Q Okay. When somebody takes out a loan, what are they  
18 borrowing against?

19 THE COURT: Mr. Herrmann?

20 MR. HERRMANN: Yes?

21 THE COURT: Confine your cross-examination to the  
22 direct testimony that Mr. Blonstein has given.

23 MR. HERRMANN: All right. I think he did in the  
24 depositions, but I can move on.

25 THE COURT: Well, this is an evidentiary hearing

1 in court. Your cross-examination ought to be limited. I'm  
2 going to limit it. Go ahead.

3 MR. HERRMANN: All right. I think that basically  
4 was my questions then.

5 THE COURT: Thank you very much, Mr. Herrmann.  
6 Anybody else wish to have any cross-examination?

7 MR. FRISHBERG: Yes, Your Honor. Daniel  
8 Frishberg.

9 THE COURT: Mr. Frishberg, go ahead.

10 CROSS-EXAMINATION OF OREN BLONSTEIN

11 BY MR. FRISHBERG:

12 Q In your deposition on Friday, you stated that you were  
13 aware of postposition transfers by Celsius to outside  
14 parties, such as DeFi to pay off loans. The transfers that  
15 were conducted on, I believe, July 10th were roughly  
16 \$160,000,000. Did the funds ever return to Celsius?  
17 Because blockchain data shows that they did not.

18 MS. BRIER: Objection, Your Honor. This is  
19 outside the scope of --

20 THE COURT: Sustained. Confine your questioning  
21 to the scope of the direct examination. This is not a  
22 deposition.

23 MR. FRISHBERG: Thank you. I have no further  
24 questions.

25 THE COURT: All right. Thank you. Anybody else

1 have any cross-examination?

2 MR. DEGIROLAMO: Yes, Your Honor. Tony  
3 DeGiolamo.

4 THE COURT: Go ahead.

5 MR. DEGIROLAMO: Thank you. On behalf of  
6 customer, Eric Wohlwend.

7 CROSS-EXAMINATION OF OREN BLONSTEIN

8 BY MR. DEGIROLAMO:

9 Q Mr. Blonstein, do you recall testifying on direct that  
10 when you were a customer of Celsius, that you believed you  
11 were giving control of your digital assets to Celsius? Do  
12 you recall that testimony?

13 A I do.

14 Q Okay. And do you also recall in your testimony to  
15 cross-examination with Attorney Cordry that you felt that  
16 there was no change in the relationship between yourself as  
17 a customer of Celsius and Celsius with respect to your  
18 digital assets?

19 A No material change from my perspective as a customer.  
20 That's right.

21 Q Okay. At no time in your testimony did you say you  
22 actually conveyed your ownership of digital assets to  
23 Celsius. And so my question is, what do you actually  
24 believe? Do you believe that you were merely giving control  
25 of your digital assets as you testified, or do you believe

1 you actually gave title of your digital assets to Celsius?

2 Because you're testifying both ways.

3 A Yeah. I thought that -- again, I may be using

4 imprecise terminology and I know --

5 THE COURT: Just answer the question. Go ahead.

6 THE WITNESS: I believe I transferred ownership.

7 I think I actually -- in the deposition, I mentioned

8 transferred title.

9 BY MR. DEGIROLAMO:

10 Q Well, I'm not interested in -- I'm not interested in

11 your --

12 THE COURT: Don't interrupt him. He's in the  
13 middle of answering your question. Do not interrupt him.

14 MR. DEGIROLAMO: Thank you, Your Honor.

15 THE WITNESS: So yeah, if I said control, what I  
16 mean by that is I'm giving my coins to the company. That  
17 was the consequential decision that I made as a customer  
18 before being an employee. And it was a consequence. It was  
19 consequential. I mean, I thought hard about it because  
20 prior to that point, I held the keys to my crypto myself.

21 MR. DEGIROLAMO: Nothing further, Your Honor.

22 Thank you.

23 THE COURT: Thank you very much. Any further  
24 cross-examination? Any redirect?

25 MS. BRIER: Briefly, Your Honor.

1 THE COURT: Go ahead. When you start, state your  
2 name for the record again so we have a clear --

3 MS. BRIER: Thank you, Your Honor. Grace Brier,  
4 Kirkland & Ellis, on behalf of the Debtors.

5 THE COURT: Go ahead.

6 REDIRECT EXAMINATION OF OREN BLONSTEIN

7 BY MS. BRIER:

8 Q Mr. Blonstein, you were asked some questions on cross-  
9 examination about whether Celsius identified in its  
10 communications to customers changes to ownership based on  
11 changes to the terms of use. Do you recall those questions?

12 A Yes.

13 Q And did Celsius communicate the changes to ownership,  
14 any changes to ownership in its communications to customers  
15 about changes to the terms of use?

16 A Yeah. You're right. That is a good -- or I understand  
17 the idea that -- so the terms of use, version eight,  
18 included a release of our custody feature, which we clearly  
19 -- where we clearly described the customers retaining  
20 ownership of their assets that they send to the company.  
21 Also, terms of use, version six and seven, talked about the  
22 transfer of -- the transfer and the customer relationship  
23 from Celsius Network Limited, the UK company, to the Celsius  
24 Network LLC, the U.S. company. So there's a change of --  
25 and also there's text there that says including change of

1 ownership to the U.S. company.

2 Q And as it relates to the ownership of the assets that  
3 users were committing to the Earn program, were there any  
4 substantial changes to those terms of use across version  
5 six, seven or eight?

6 A So I think I'm probably reducing it as a layperson. I  
7 just viewed this as you either keep your coins or you give  
8 them to someone. And so in this case, I viewed the terms of  
9 use from when I joined up until now as if you send your  
10 coins in to be used to earn yield, you're giving them to the  
11 company. If you don't want to do that, don't send them to  
12 the company and enroll them in the Earn program.

13 So from my perspective, I don't really see any material  
14 change. Some of the wording may have changed where the loan  
15 was introduced. I don't know the reason for why that was  
16 done exactly. From my perspective, I think that there has  
17 been no material changes.

18 Q And Mr. Blonstein, how many versions are there of the  
19 terms of use?

20 A Eight.

21 Q And can Celsius determine what the latest version of  
22 the terms of use that a user signed is?

23 A Yes.

24 Q And did Celsius do that?

25 A Yes.

1 Q And how many users, account holders, on a percentage  
2 basis, signed version six or later?

3 A Six or later. So by count of customers, I think it's  
4 over 90 percent and in terms of asset values, because we  
5 have a lot of customers that may have accepted but never  
6 sent coins on the platform, I think it's 99 percent of the  
7 asset value.

8 MS. BRIER: All right. No further questions at  
9 this time.

10 THE COURT: All right. Thank you.

11 MS. BRIER: Thank you, Your Honor.

12 THE COURT: All right. You're excused. Thank you  
13 very much.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Nash?

16 MR. NASH: So Your Honor, that concludes the  
17 evidentiary portion of the hearing.

18 THE COURT: Do you rest?

19 MR. NASH: We rest, Judge.

20 THE COURT: All right. Do any of the objectors  
21 wish to offer evidence in support of their objections? The  
22 Court has read all the objections. Hearing no response, the  
23 Court determines that the objectors have rested as well. We  
24 can proceed with the argument then. Why don't we take -- so  
25 it's 11:42. Let's take a ten-minute recess, and then are

1 you going to make the argument, Mr. Nash?

2 MR. NASH: I will, Judge. Should we do that at  
3 noon just to be -- or I'd hate to --

4 THE COURT: Sure. We'll come back at noon.

5 MR. NASH: Perfect.

6 THE COURT: Okay.

7 MR. NASH: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 (Recess)

10 THE COURT: Please be seated. All right, Mr.  
11 Nash.

12 MR. NASH: For the record, Pat Nash from Kirkland  
13 and Ellis on behalf of the Debtors. So Your Honor, the  
14 issue before you is whether or not there is an enforceable  
15 contract between the Earned depositors and Celsius, and if  
16 there is, do the unambiguous terms of that agreement provide  
17 that upon depositing coins onto the platform, individuals  
18 transferred title to their digital assets such that those  
19 digital assets are property of the estate.

20 And of course if we're talking about whether or  
21 not we have an enforceable contract, Judge, we're talking  
22 about offer, acceptance, and consideration. The terms of  
23 use, Judge, that was the offer from Celsius and from the  
24 evidence in the record we know that there were eight  
25 versions of the terms of use. From the evidence that's in



1 the record we know that the terms of use were accepted by  
2 90.06 percent of account holders and those holders, their  
3 coin deposits represent 99.86 percent of the Earn  
4 liabilities, Judge.

5 We know from Mr. Blonstein's testimony that  
6 approximately 55 percent of account holders first accepted  
7 terms of use Version 5 or earlier. We also know from Mr.  
8 Blonstein's testimony that all of those users, all of those  
9 55 percent were required to accept terms of use Version 6 in  
10 order to maintain access to their accounts.

11 THE COURT: So Mr. Nash, having gone through all  
12 of the versions, Versions 1 through 5 are less clear to me  
13 on the issue of owners. Version 6 forward was clearer. The  
14 screenshot of the update in terms of service for Version 6  
15 listed, I think, three major changes, significant changes.  
16 Is there a screenshot for the changes between Versions 4 and  
17 5? I don't remember seeing that.

18 MR. NASH: There's not, Your Honor.

19 THE COURT: And that's -- it is the change from  
20 Version 4 to Version 5. I thank the Debtor -- I thank the  
21 Committee for its limited objection that it filed because it  
22 went through each of the versions you did not in your  
23 papers. You simply said, look at the exhibits. And it does  
24 seem to me that arguably -- I haven't made up my mind.  
25 There was a more significant change between Versions 4 and

1 Version 5 that were not highlighted to customers. I sort of  
2 take Ms. Cordry's point in her cross examination about it.

3 The objectors did not put in any evidence of any  
4 of Mr. Mashinsky's videos or anything else that he's  
5 allegedly said. It's not in the record. The record is  
6 closed. And so if objectors had evidence they wanted to  
7 offer, they had their chance and they didn't. So I don't  
8 know what Mr. Mashinsky said or didn't say or whatever. And  
9 I certainly -- again I haven't made up my mind about it, but  
10 I do note it does seem to me that there was -- the language  
11 changed between Versions 4 and 5; 6 comes along and  
12 highlights some changes. Not saying they weren't important,  
13 but nothing that that bears on the ownership issue.

14 Let me just see. So the percentage of the account  
15 holders who became account holders, Version 6 and after, was  
16 a pretty high percentage.

17 MR. NASH: Forty-five percent, Judge.

18 THE COURT: Okay.

19 MR. NASH: And if I may, Your Honor, I will argue  
20 that it is of legal significance that everybody who  
21 initially signed up for Versions 1 through 5 also clicked  
22 acceptance.

23 THE COURT: Oh, I understand that. They -- yeah,  
24 I got that.

25 MR. NASH: With respect to Version 6. Thank

1 you.

2 THE COURT: I got that point. But I suppose that  
3 Ms. Cordry's point is that -- and you may disagree with me,  
4 that there was, the language changed in any important way  
5 between Versions 4 and Version 5. It did seem to me that it  
6 did. And I guess Ms. Cordry's point is come on, you got 40  
7 pages of terms of use. Do you really think people read it  
8 and no one highlighted for them that maybe there was an  
9 important change? I know the position of the Debtor and I  
10 think that there's support for it in the language that from  
11 Version 1 on, ownership was in the Debtor. Not so clear.  
12 Not as clear, let's put it that way.

13 MR. NASH: You know, one thing I'd highlight, Your  
14 Honor, it's interesting because we certainly have a lot of  
15 objections to this motion, plus or minus 40, I suppose. I  
16 don't have the agenda in front of me. But as an actuarial  
17 matter, Your Honor, as a percentage of 600,000 depositors, I  
18 would submit that as an actuarial matter, why do we only  
19 have -- well, why do we only have 40 objections?

20 As an actuarial matter, because a number of people  
21 don't have the time, the interest, the inclination, can't  
22 afford to divert themselves from their day job, can't afford  
23 to hire a lawyer. But when you're talking about 600,000  
24 depositors, Judge, I think it's fair to say that as an  
25 actuarial matter, there are probably a number of people who

1 understood what it is they were signing up for.

2 From the very first version of the terms of use,  
3 Version No. 1, every version starting with Version No. 1  
4 said that the terms of use clearly state that Celsius has  
5 the right for its own account to pledge and re-pledge from  
6 time to time digital assets transferred to them. That was  
7 the price for admission, Your Honor, in order to earn  
8 rewards. Terms of use Version 2 and every version onward  
9 explicitly states that the Debtors had all attendant rights  
10 of ownership to such assets. Now it wasn't until later that  
11 it was clearly spelled out -- clearly spelled out -- that  
12 putting your coins on the platform expressly constituted a  
13 transfer of title.

14 I will submit that they -- that language, that  
15 concept was made more clear but it doesn't mean that the  
16 earlier versions of the terms of use don't provide for a  
17 transfer of title when you consider what it is that people  
18 were putting their coin on the platform for Celsius to do,  
19 to loan it, to pledge it, to sell it, to do whatever Celsius  
20 wants to do with it in order to generate yield.

21 And it is -- and you heard Mr. Blonstein say and  
22 it's, you know, it was part of his testimony. I believe it  
23 came out in cross examination. He didn't think that the  
24 change was material -- now he's just one customer, also an  
25 employee -- because he believes and he believed himself that

1 when he accessed the Celsius platform pursuant to one of the  
2 earlier versions of the terms of use, he understood what he  
3 was doing and the legal effect or the practical effect of  
4 putting his coins on the platform.

5 So you know, our position, Judge, is that we have  
6 offer, we have acceptance through the clickwrap. A ton of  
7 caselaw, Your Honor, about how that is a valid manifestation  
8 of acceptance. It isn't fair to all the other depositors.  
9 Presumably some people read the terms of use and understood  
10 what they were doing. Now we have a very vocal minority of  
11 our customers who have objected, many of whom have objected  
12 to all sorts of pleadings, which is perfectly fair. It's  
13 their right. But we have a whole host of, as I said,  
14 customers who haven't objected and in addition to what I  
15 think is the clear legal argument around offer, acceptance,  
16 and consideration, this is bankruptcy court, a court of  
17 equity.

18 We have practical considerations. We have  
19 equitable considerations. Many of the objectors, you know,  
20 the -- what they're asking for is something that we are not  
21 going to be able to do. We do not have enough coin to give  
22 everybody their coin back in kind. We don't have enough  
23 coin to establish 600,000 constructive trusts to give  
24 everybody their coin back. We have a universe of coin that  
25 we're working very closely with the UCC and we're getting a

1 lot closer to moving these cases forward as you'll hear in  
2 connection with the exclusivity extension.

3 You know, there is a light at the end of the  
4 tunnel but in order to maximize the recovery of all of the  
5 Earn customers, we're going to have to do this collectively.  
6 We -- you know, and Your Honor, as is clear in the coin  
7 reports, I don't know that it's part of the evidence, but  
8 nobody disputes. We've got lots of some kinds of coins. We  
9 have very few of other kinds of coins. We don't have the  
10 ability to trace individual people's coins.

11 And so on the one hand, it's our strong view that  
12 we have offer, acceptance, consideration. But then as a  
13 practical matter, if that's not the outcome, I don't know  
14 where we go from --

15 THE COURT: Let me ask you -- move to a different  
16 question. In the proposed order that you've submitted, I  
17 don't know whether there have been any further changes to  
18 it. I think it was indicated this was something that was  
19 agreed upon with the Committee's counsel.

20 On Page 3 in No. 3, it reads in part, "The amended  
21 motion will not seek findings with respect to, one,  
22 ownership of assets in the Debtor's borrow program or  
23 custody service or withhold accounts; or two, whether any  
24 account holder has valid defenses to the reported contract  
25 between account holders and the Debtors under the terms of

1 use and all parties' rights are reserved with respect to  
2 each of the foregoing," and it goes on with provided.

3 So what are the -- was there, is there a  
4 background to the discussion of this carveout for valid  
5 defenses to the reported contract?

6 MR. NASH: Yeah, that was heavily negotiated with  
7 the UCC, Judge. And so your next question might be, well,  
8 what does that mean.

9 THE COURT: Yeah, that's the next question.

10 MR. NASH: I understand. So at a minimum, Your  
11 Honor, what we seek here is the general rule as to what the  
12 terms of use provide. And I suppose it's possible in  
13 connection with the claims resolution procedure, in  
14 connection with a claims objection from a customer, in  
15 connection with an affirmative pleading from a customer,  
16 it's possible that a customer might petition the Court or  
17 make the argument, a very personalized individual argument,  
18 as to why for some reason they should be excepted from the  
19 terms of use.

20 THE COURT: Well --

21 MR. NASH: For example, I can't -- is there a  
22 customer out there -- Mr. Mashinsky went to lots of trade  
23 conferences and whatnot. Is there a customer out there  
24 who's going to be able to come in front of Your Honor and  
25 say that he had -- he or she had specific conversations with

1 specific Celsius management that caused them to think the  
2 terms of use didn't -- I don't know what those would be,  
3 Your Honor. Because I don't think it's going to be at the  
4 end of the day, folks who, you know, watched the Mashinsky  
5 videos.

6 Because again, with 600,000 customers, I think,  
7 you know, tens of thousands, if not hundreds of thousands of  
8 our customers watched the AMAs, the "Ask Mashinsky Anything"  
9 videos. And so I'll be surprised if we have personalized,  
10 you know, unique defenses.

11 THE COURT: Let me ask this question. What about  
12 arguments about rescission and restitution for fraud? A lot  
13 -- you know, reading pro se objections, lots of people said  
14 they think there was fraud. One thing to say; another thing  
15 to prove it, but --

16 MR. NASH: Perhaps we'll have pro se or other  
17 creditors who will bring a motion or pleading to that  
18 effect. Nothing in this order would prohibit them from  
19 doing that. But in order to move the case forward --

20 THE COURT: Well, you know, I mean, part of my  
21 concern, I approved a bidding procedures motion. And I  
22 asked myself, what is someone bidding on.

23 MR. NASH: Correct.

24 THE COURT: And what have you -- what have you  
25 bought if there's an express carveout or defenses to



1 purported contract between account holders and the Debtor  
2 under the terms of use? I don't -- I'm sitting. I'm  
3 reading this stuff over the weekend. I was saying --

4 MR. NASH: Yeah, we're -- we can manage that,  
5 Judge. We're managing that with the bidders. We're in  
6 discussions with the bidders. They're following the hearing  
7 closely, the hearings and the proceedings. It's very  
8 important, Your Honor, that we establish the general  
9 baseline as to the legal effect of the terms of use, and the  
10 legal effect, I submit and expect that will be, you know,  
11 binding on the vast majority, all very rare exception  
12 potentially, should someone seek it or bring it.

13 There's nothing in this order that forever cuts  
14 off somebody's right to file some type of pleading with Your  
15 Honor to seek to bring to Your Honor's attention their own  
16 individual circumstances, and if they do, we'll deal with  
17 it.

18 THE COURT: In terms of percentage of value of  
19 account holders, how many are Version 6, you know, first  
20 logged on Version 6 or after?

21 MR. NASH: So --

22 THE COURT: Forty-four percent?

23 MR. NASH: Forty-five percent in terms of the  
24 percentage of the liabilities on the platform.

25 THE COURT: Yeah.

1 MR. NASH: I don't have that at my fingertips, but  
2 probably by the time -- it's probably here somewhere and  
3 we'll seek to get it for you.

4 THE COURT: Okay. All right, go ahead you're your  
5 -- you know, I've read all these papers.

6 MR. NASH: Yeah, so I'll move from the Earn to the  
7 selling of the Stablecoin.

8 THE COURT: Sure.

9 MR. NASH: If you conclude that the Stablecoin is  
10 our property.

11 THE COURT: Let me cut this a little shorter. In  
12 my own mind, and Ms. Cornell can argue to the contrary about  
13 it, but frankly I don't have to decide whether this is  
14 ordinary course of business or not, because you argue and it  
15 seems to carry some persuasive weight with me that even if  
16 it's not ordinary course of business and the Committee  
17 certainly argues this, it's the best interests of the  
18 Debtors. It's the proper exercise of business judgment.

19 And frankly, you know, Ms. Cornell is going to  
20 take issue with this, but whether the sale, if I approve it,  
21 whether it happens next week or next month or in stages as  
22 needed, yeah, I mean, the Debtors can only use the assets.  
23 You know, they can't use it in a slot machine in Monte Carlo  
24 but they can pay salaries and administrative expenses and  
25 all that.

1           So I, you know, at least my mindset right now is  
2           if I conclude that everything in the Earn accounts is  
3           property of the estate, which I'm not there yet -- take it  
4           under submission -- Stablecoin is no different than anything  
5           else in Earn accounts. And I agree with the Committee, it's  
6           not ordinary course of business. You don't have an ordinary  
7           course of business at this point.

8           MR. NASH: That's why in the alternative, Your  
9           Honor --

10          THE COURT: Look, it doesn't -- that's why I say,  
11          it doesn't -- frankly, it seems to be an appropriate  
12          exercise of business judgment to sell Stablecoin, have that  
13          liquidity ramp. If you -- no one better go to Las Vegas and  
14          gamble it. You're not deploying the assets the way you were  
15          before. So you know, that's -- my mindset at this point is  
16          if it's property of the estate, showing good business  
17          judgment to sell it.

18          MR. NASH: Unless you have any other questions for  
19          me., Your Honor --

20          THE COURT: I don't.

21          MR. NASH: Thank you, sir.

22          THE COURT: Let me hear from the Committee.

23          MR. COLODNY: Good afternoon, Your Honor. Aaron  
24          Colodny from White and Case on behalf of the Committee. I  
25          have a number of pages that I'm guessing I'm not going to

1 get through. I'll start --

2 THE COURT: I would like to eat lunch before we go  
3 on Zoom for the afternoon calendar.

4 MR. COLODNY: That's true.

5 THE COURT: Well chosen.

6 MR. COLODNY: I'll start by noting that the  
7 Committee understands why account holders who feel that  
8 they've been misled and mistreated would be upset with the  
9 finding that digital assets they have transferred to Celsius  
10 are Celsius' property.

11 THE COURT: Yeah, some of them are upset at the  
12 Committee and its counsel, too.

13 MR. COLODNY: I think we had 397 of them.

14 THE COURT: Yeah.

15 MR. COLODNY: But the Committee's first obligation  
16 is to, when faced with his hard question, is to get the  
17 correct answer. And we believe that this answer is both  
18 right on the law and it best serves the interests of account  
19 holders and creditors, and I think this goes to the  
20 equitable concerns that Mr. Nash read. The Debtors have \$16  
21 million of available Stablecoin and a billion dollars' worth  
22 of Stable --

23 THE COURT: Though it was \$18 million.

24 MR. COLODNY: Eighteen. Apologies. And a billion  
25 dollars' worth of Stablecoin obligations. That's a less

1 than 1 percent recovery. And if you say, I deposited  
2 Stablecoin with the Debtors and that Stablecoin is my  
3 property, then you have a very hard claim to say, I have an  
4 interest in other assets of the Debtors. Personally, I  
5 don't think it's fair that people that deposited money with  
6 the Debtors and had no control over what was lost or  
7 otherwise squandered, get 1 percent versus others get 60 to  
8 80 percent.

9 THE COURT: Look, I've written before that a  
10 fundamental tenet of our bankruptcy system is equality of  
11 distribution. And I commented in earlier hearings in this  
12 case that to the extent that any account holders are able to  
13 establish that what they deposit is their property, not the  
14 estate's property, it's that much less available for  
15 distributions to the creditor body at large. That's sort of  
16 fundamental premise, but it doesn't decide the ownership  
17 interest.

18 MR. COLODNY: It doesn't decide the ownership  
19 issues. And a couple of questions that you asked Mr. Nash  
20 were about the click back mechanism, and the disclosure that  
21 was given to account holders. I think the Uber case is very  
22 relevant. There the Second Circuit Court of Appeals was  
23 looking at California law, but it noted that New York law  
24 was extremely similar and it was looking at a decision of  
25 the District Court that said that a -- I think it was

1 someone using the ride hailing app didn't have notice of the  
2 arbitration provisions and the District Court found that it  
3 wasn't proper inquiry notice because the arbitration  
4 provision was, you know, deep within the terms of use.

5 And the District Court said, or the Second Circuit  
6 said, as long as the notice is clear that when you click  
7 accept you're accepting the terms of use and the terms of  
8 use are available to the person, then that is a proffer,  
9 offer, and acceptance of those terms of use.

10 THE COURT: Yeah, the ALI has been -- I don't know  
11 where the current, this issue currently stands. They  
12 debated whether to start a project on consumer clickwrap  
13 contracts because the reality is most -- you get your credit  
14 card agreement. You know, even in paper, you don't read the  
15 whole thing. Clickwrap contract, who's going to read the --  
16 how many people really read the 40 pages? \But you check  
17 the box and Celsius says, unless you check the box, you  
18 can't, we won't give you access to your capital. Set a  
19 deadline. I understand all that, but it's the reality of  
20 modern business, frankly, and it's a dilemma and it's an  
21 issue, but the law is developing the way it's developing.

22 MR. COLODNY: Well, I guess I have a lot here  
23 about how --

24 THE COURT: Let me ask you specifically, and I  
25 really, I derive this from your brief and maybe you disagree

1 with me. But it seems to me that the most significant  
2 change in language, I won't use the word material, okay.  
3 The most significant change in language about ownership  
4 happened between Versions 4 and 5 and those changes weren't  
5 -- there's no screenshot showing that it highlighted the  
6 change in that language. Do you agree or disagree with  
7 that?

8 MR. COLODNY: We're aware of no screenshot that  
9 highlighted that change in language. But I --

10 THE COURT: Do you think that was a material  
11 change? You didn't think it was a significant change? Drop  
12 the word material. Material has legal connotations I'm not  
13 trying to put on it.

14 MR. COLODNY: So when I look back at the versions  
15 of the terms of use, the first version has a representation  
16 and warranty that says that you agree that Celsius can  
17 pledge and re-pledge all of your assets. And in the second  
18 version it gets clearer and it says Celsius can pledge, re-  
19 pledge, re-hypothecate, sell -- someone took a list of every  
20 transaction they could think of, put it there. And it says  
21 with all attendant rights of ownership.

22 THE COURT: It does, it -- right at the end of it  
23 there. It says with attendant rights of ownership. Those  
24 are the words that are --

25 MR. COLODNY: That's right. And I'm not sure how

1 you can give attendant rights of ownership if you don't have  
2 attendant rights of ownership. And I know that it got  
3 clearer where it says, you transfer all right, title, and  
4 interest later on. But I think that second term of use  
5 which was signed up by 96 percent of the account holders did  
6 say you're giving your stuff to Celsius and Celsius can sell  
7 it to whoever it wants without notice to you with all  
8 attendant rights of ownership.

9 So it may have gotten clearer, but I think it's  
10 there from at least the second version. And I believe the  
11 first one as well.

12 THE COURT: Okay.

13 MR. COLODNY: With respect to the defenses --

14 THE COURT: I don't know what -- I mean, I --

15 MR. COLODNY: I saw with the Debtors' counsel and  
16 tried to bang my head against the wall. We had a hearing on  
17 December 5th and I think we had 20 days over Thanksgiving  
18 holiday with a lot of people that wanted to take a lot of  
19 discovery. We have been taking a lot of discovery and I was  
20 not confident that we could get it done in the time period  
21 that we had. By reserving defenses, I believe that we  
22 preserved an element of due process that otherwise people  
23 would have complained perhaps rightly about and I think that  
24 we preserved those for a later date. I think --

25 THE COURT: Why -- you just tell me why the chief



1 revenue officer refused to appear for a deposition? You  
2 wanted his deposition. This is -- I'm reading Footnote 20  
3 of your --

4 MR. COLODNY: We did not ask for a deposition  
5 because before the opponents were identified, we agreed that  
6 we would only use their declarants. The point of that  
7 footnote was to say that Mr. Blonstein testified that he  
8 wasn't directly involved with the solicitation. He also  
9 testified at his deposition that Mr. Cohen-Pavon was  
10 involved. The Debtors didn't produce him and we didn't have  
11 a chance to talk to him. We've sought to serve him with  
12 Rule 2004 requests and he has resisted and said this was --

13 THE COURT: Just tell me what your view is. I  
14 mean, he's a current employee?

15 MR. COLODNY: He is.

16 THE COURT: Why do you need a subpoena? I don't  
17 think you need a subpoena for him. I mean, you served a  
18 notice of deposition for him. If they didn't produce them,  
19 I deal with it.

20 MR. COLODNY: Point taken.

21 THE COURT: You know, you talk about that he  
22 wanted to be served under the Hague. He's an employee of a  
23 Debtor. Rule 2004, you want to take his deposition, take  
24 his deposition. He doesn't want to show up, we'll deal with  
25 it.

1 MR. COLODNY: Okay.

2 THE COURT: All right, anything else you want to  
3 add?

4 MR. COLODNY: I guess I would like to talk a  
5 little bit about the plain language of the terms of use.

6 THE COURT: Go ahead.

7 MR. COLODNY: And specifically, I think a lot of  
8 people have raised this concept of a loan in a transfer of  
9 title. And when I was thinking about that, I looked at  
10 Section 4 of the most recent version of the terms of use  
11 where it says, in all bold, "If our Earn service is  
12 available to you, upon your election you will lend your  
13 digital assets to Celsius and grant Celsius all right and  
14 title to such digital assets for Celsius to use in its sole  
15 discretion while using the Earn service."

16 I don't know how you read that to say you will  
17 lend your assets to -- eligible digital assets to Celsius  
18 and grant Celsius all right, title to such digital assets to  
19 conflict. You would have to strike the last part of the  
20 sentence. And that's not how we're supposed to write --  
21 read contracts. The same is true for Section 13, which the  
22 Debtors site as their long sentence giving title. And I  
23 think it's key that the Debtors didn't have an obligation to  
24 give you back your exact crypto asset. They had an  
25 obligation to give you back a like kind crypto asset.

1           Crypto is fungible like money. If you get a loan  
2       of dollars, you have to give dollars back, but not the exact  
3       same dollars. And I don't think that they -- that that  
4       indicates that there was an ownership in a potential -- in a  
5       particular asset that the Debtor was holding.

6           You noted some reservations we had in an order  
7       about the sale of Stablecoin. I think the Debtor has agreed  
8       to those, notice to use them only for ordinary course  
9       business reasons, to use them only when the Debtors reach  
10      their minimum liquidity threshold is responsible operation  
11      of the business.

12          And I guess just lastly, Your Honor, I want to --  
13      I know you said this earlier, but I think it's very  
14      important that that everybody understand that just because  
15      Celsius has the property and the property may be property of  
16      Celsius does not mean it's not going to be distributed to  
17      account holders. It doesn't mean Celsius can do whatever it  
18      wants with it.

19          When you are a Debtor in bankruptcy, Celsius has  
20      to come to Your Honor and ask to do anything outside of the  
21      ordinary course of business. If it wants to confirm a plan,  
22      all account holders then get to vote on that plan. If it  
23      wants to sell its assets as part of the bidding procedures,  
24      it has to prove to Your Honor that that's in its business  
25      judgment and one of the key elements of that is going to be

1 if it's in the best interests of the account holders.

2 And so this is not people giving their money to  
3 Celsius and Celsius taking it and saying it's mine now, you  
4 don't get it back. Celsius has an obligation to each  
5 account holder to pay them back. They don't have enough to  
6 pay everybody back. It's very important to the Committee  
7 that we reach a fair distribution of assets that recognizes  
8 people's -- what people signed up for and distributes things  
9 fairly based on what happens. It wasn't the fault of  
10 anybody who got themselves into this mess. But it is  
11 important that it be sent fairly and efficiently, because  
12 one thing we've all heard today is these cases cost a lot of  
13 money and we need to be making movement towards the exit so  
14 that we can cut that off and get as much back to people as  
15 we can as soon as possible.

16 THE COURT: Okay, thank you.

17 MR. COLODNY: Thank you.

18 THE COURT: All right. Ms. Cornell, do you want  
19 to be heard?

20 MS. CORNELL: Good morning again, Your Honor.

21 Shara Cornell on behalf of the Office of the United States  
22 Trustee.

23 THE COURT: Good afternoon. That clock is wrong.

24 It's not as bad as that, but we're at the end. Go ahead.

25 MS. CORNELL: Close. The United States Trustee

1 filed objections to the Debtors' motions to sell Stablecoin  
2 at ECF Docket No. 933 and 1489. As discussing these  
3 objections, there are two distinct issues today and I just  
4 want to keep it brief.

5 The first is whether the Debtors have authority to  
6 sell the subject Stablecoin and the second is whether  
7 assuming the Debtors can sell the Stablecoin, if they should  
8 sell that Stablecoin. And it really is questionable whether  
9 the Debtor should, as of today, sell \$18 million worth of  
10 Stablecoin.

11 By the admission of the Debtors' professionals and  
12 employees, the Debtors do not currently need the money and  
13 won't need the money until March. The Debtors have relied  
14 on their business judgment as to why Stablecoin should be  
15 sold, but business judgment is not unfettered and at a bare  
16 minimum, the Debtors must create an evidentiary basis why  
17 they're selling what they're selling, including the  
18 quantity, and why it needs to be sold now instead of at a  
19 later date and what the proceeds of the sale will fund.

20 The Debtors have admitted that they can sell at  
21 any time. Moreover, a liquidation analysis, not even been  
22 done yet. Regardless of how the parties try to divert  
23 attention in this case to other issues, there is no way that  
24 the sale of these coins will not impact a later distribution  
25 to creditors. If the parties are going to sell the Debtors'

1 business as a going concern --

2 THE COURT: Why is that?

3 MS. CORNELL: I'm sorry?

4 THE COURT: Why will it not -- why will it not  
5 affect later distributions? I mean I asked the question as  
6 well and they -- well, they can buy more Stablecoin if  
7 there's other liquidity they can -- you know, and then  
8 they're not going to face the vast market swings that the  
9 other crypto has if they commit to distributing Stablecoin  
10 to those who deposited Stablecoin. They may not have it  
11 now, but they can get it later.

12 MS. CORNELL: I haven't heard that commitment to  
13 date, Your Honor.

14 THE COURT: They said it today. You heard that?  
15 That was -- I asked the question that you know how much is -  
16 - they're not selling. At this point, they're not seeking  
17 authority to sell anything connected with custody or  
18 withhold or the collateral for loans and that's how they get  
19 to the \$18 million. Okay. And I suppose, you know, we'll  
20 get to some point where we'll resolve the issues of custody  
21 and withhold and -- but what, you know, they can convert  
22 fiat currency into Stablecoin at any point if they're going  
23 to have a plan. Agreed?

24 MS. CORNELL: I don't see why not, but we haven't  
25 gotten to that point yet where we've seen anything --

1 THE COURT: I know, so what --

2 MS. CORNELL: -- from the Debtors.

3 THE COURT: But I don't --I truly am mystified  
4 about what the real -- assume for a moment, okay, that it's  
5 property of the estate, Okay. If it's not property of the  
6 estate, they can't. Okay. Assume it's property of the  
7 estate. I don't understand what your real objection to  
8 their selling the Stablecoin, converting it into fiat  
9 currency, they have to use the proceeds in ordinary course  
10 of business, administrative expenses, including salaries and  
11 all that. They can't go to Las Vegas. Frankly, the dollars  
12 are going to -- in my view, safer than crypto and we had  
13 lots of, you know, effort in this case dealing with 345 and  
14 all that.

15 I'm frankly more comfortable if it's in fiat  
16 currency. So I'm really, I'm somewhat mystified about what  
17 your real objection is.

18 MS. CORNELL: At this point, my objection is based  
19 solely on that the Debtors just haven't provided an  
20 evidentiary basis for what they're going to use the proceeds  
21 for. We've heard today that they are currently funding non-  
22 Debtor entities to the tune of \$500,000 at least. They  
23 couldn't point to the budget that was provided to the  
24 parties to explain that and they want to convert \$18 million  
25 worth of cryptocurrency to fiat and it's unclear to at least

1 me as to what that money is going to be for.

2 THE COURT: So let me ask you this. If the Court  
3 determined that the Stablecoin is property of the estate,  
4 what prevents them from transferring Stablecoin to one of  
5 these other entities, Debtor or non-Debtor entities? I  
6 mean, they better -- you know, they're going to need my  
7 approval, but whether it's Stablecoin or fiat, they're going  
8 to need the same approval. I'm sure the Committee is going  
9 to be screaming bloody murder if they try and use the funds  
10 to fund non-Debtor activities that there are inadequately,  
11 you know, not collateralized and all that. True?

12 MS. CORNELL: It's possibly true, but we do know,  
13 we know right now that they are making those types of  
14 payments to non-Debtor entities.

15 THE COURT: So object to it.

16 MS. CORNELL: We're in the process of gathering as  
17 much information because we weren't aware of those based on  
18 the budgets that were provided.

19 THE COURT: Come on, Ms. Cornell. I asked at the  
20 first day hearing, first or second day, I asked because I  
21 always ask about, are funds being used, transferred to non-  
22 Debtors, non-Debtor affiliates.

23 MR. NASH: Your Honor --

24 THE COURT: No, don't interrupt, Mr. Nash.

25 MR. NASH: Sorry, Judge.



1 MS. CORNELL: I mean, that's all at this time,  
2 Your Honor. We were just looking for their evidentiary --

3 THE COURT: You have a position on whether crypto  
4 assets including Stablecoin are property of the estate?

5 MS. CORNELL: No, Your Honor, not at this time.

6 THE COURT: Okay, thank you.

7 MS. CORNELL: Thank you.

8 THE COURT: All right. Who else wants to be  
9 heard?

10 Go ahead. Ms. Milligan, you want to be heard?  
11 You're on the screen.

12 MS. MILLIGAN: Yes, Your Honor, thank you. Layla  
13 Milligan on behalf of the Texas State Securities Board and  
14 Texas Department of Banking and we also filed an objection  
15 to the amended Earn and Stablecoin motion at Docket 1496,  
16 which I'm sure this Court has read, and thank you for your  
17 time.

18 One of the issues that we are concerned with in  
19 this case because we are looking at this from a regulatory  
20 standpoint, it's our understanding that the Debtor has never  
21 been regulatorily compliant. Mr. Blonstein, who is the  
22 chief compliance officer, could not attest whether they were  
23 ever registered as a securities broker dealer, any sort of  
24 securities regulation. We have serious concerns about --

25 THE COURT: Let me just -- let me stop you there.

1 Okay. Let's assume for our discussion, they have not  
2 complied with state securities regulations. How does that  
3 deal with whether or not, A, it's property of the estate or  
4 B, whether I should permit them to sell the Stablecoin and  
5 use it in connection with the case? That's the issue for  
6 today.

7 MS. MILLIGAN: Because the concern is that the  
8 contract was an illegal contract and that makes the contract  
9 void and unenforceable. And that issue was carved out --

10 THE COURT: I'm not so --

11 MS. MILLIGAN: -- between --

12 THE COURT: I'm not sure about that because, you  
13 know, then we get in issues about 510 in the Bankruptcy Code  
14 and subordination and you treat the securities law claims.  
15 Basically, they're treated the same way. They'd be -- here,  
16 they'd be treated as unsecured claims. I mean, so -- I  
17 mean, the Bankruptcy Code deals with it in Section 510.  
18 There've got to be a dozen Lehman Brothers decisions that  
19 deal with 510. I had MF Global. I've got decisions in MF  
20 Global about it. So if they violated the securities laws --

21 MS. MILLIGAN: Yes.

22 THE COURT: -- they violated -- you know, you'll  
23 get your pound of flesh against them. The important -- from  
24 my standpoint, I want the creditors to get their recoveries,  
25 okay.

1 MS. MILLIGAN: The State of Texas wants the  
2 individual investors to get made as right as possible. That  
3 is the point and one of the --

4 THE COURT: We agree.

5 MS. MILLIGAN: -- carveouts -- yes, absolutely.  
6 And one of the carveouts between the Committee and the  
7 Debtor was to not discuss any of these defenses and not  
8 produce any discovery on these defenses. And I will tell  
9 you, while the Debtor continues to say they are working with  
10 the Committee to formulate a plan, they are not working with  
11 the regulators. And this company is severely regulatorily  
12 deficient and has been and built its business on the back of  
13 innocent investors. And that is who we're looking at.

14 If a contract is void and unenforceable, then it's  
15 not just offer and acceptance and let's move on and sell  
16 things. It's a matter of all of the elements. And one of  
17 the issues is Rule 7001 provides for a way to go through,  
18 not a long, painful process. The Court can keep it as short  
19 as possible.

20 But what the Debtor has done is filed a motion, an  
21 amended motion, scheduled three depositions over two days,  
22 provided incomplete written deposition answers, assumed no  
23 one else has an interest except the Committee, and is  
24 (indiscernible) towards this judgment today as to that -- as  
25 the assets of the estate without considering any defenses in

1 any contracts.

2 And yes, there are 600,000 investors. There were  
3 probably over 9,000 in Texas alone, and we have serious  
4 concerns about the process. The Earn investors are the low  
5 hanging fruit in this case and the Debtors are aware of this  
6 and are seeking to monetize those assets and that is our  
7 concern. There hasn't been --

8 THE COURT: May I ask you a question? Would you  
9 prefer that the company just liquidated tomorrow?

10 MS. MILLIGAN: I don't know what option they have.  
11 We don't know what other option they have because no Version  
12 2.0 has been presented that is viable and regulatorily  
13 compliant. We have no information as to what -- I would  
14 prefer that the customers get made right. However that  
15 happens, whether through liquidation or reorganization,  
16 that's what we're trying to focus on. But at this point, it  
17 seems like everyone is running towards the goal without  
18 knowing the rules of the road and that's our concern.

19 The examiner has a report coming out in  
20 approximately a month that further examines what is going on  
21 and what happened in this case. That is not being  
22 considered. I just think this is a situation that the Court  
23 could place on even an expedited timeline with proper  
24 adjudication of all the facts and allow the parties to have  
25 an opportunity to be heard and due process to happen.

1 THE COURT: From early, from the very first days  
2 in this case, the ownership of Earn assets was identified  
3 as, you know, a gating issue. So what I strongly disagree  
4 with, Ms. Milligan, is that somehow -- you make it sound  
5 like they sprung this on you. From right at the start of  
6 this case, the -- in their, you know, in their first brief  
7 they filed, they identified a range of issues that are going  
8 to have to be resolved. I've known about it since day one  
9 and I think you have, too, so they didn't just spring this  
10 on anybody. If an exit strategy is going to be pursued with  
11 a 363 sale, the buyer has got to know what they're bidding  
12 on.

13 It's crucial to know this in order to do that.  
14 Any buyer is going to have to comply with state and federal  
15 regulations going forward. I've commented on that before as  
16 well, you know. It may well be that this Debtor failed to  
17 comply with multiple state regulations and federal  
18 regulations. That's for another day and maybe for another  
19 Court. But the point is the issues that are being addressed  
20 today were identified as in day one of this case and the  
21 real issue is how we can cut this enormous administrative  
22 expense and get this case to the goal line to get an exit  
23 and whether it's a standalone plan or 363 sale. You know,  
24 I'll put this off for another six months or a year and  
25 there'll be a corpse left. Any other points you want to

1 make, Ms. Milligan?

2 MS. MILLIGAN: No, Your Honor. I think we just  
3 stand with the arguments in our pleading and I --

4 THE COURT: Okay.

5 MS. MILLIGAN: -- appreciate the Court's time.

6 THE COURT: Thank you. All right, anybody else  
7 wish to be heard? Ms. Cordry.

8 MS. CORDRY: Yes, Your Honor.

9 THE COURT: Go ahead.

10 MS. CORDRY: Okay. This is Karen Cordry again,  
11 bankruptcy counsel for the National Association of Attorneys  
12 General. And -- get my notes back up here. One second. I  
13 think in some respects, I would agree that I -- with Mr.  
14 Blonstein and the Committee that the Debtor certainly has  
15 been trying to transfer -- create a transfer of ownership to  
16 itself. I think the language they have done continues to  
17 remain ambiguous.

18 I think the statement that, well, if I say I'm  
19 loaning to you and therefore I'm transferring ownership,  
20 that if I treat that as being ambiguous, I'm dropping off  
21 the second half of the sentence, well, it also means that if  
22 you don't treat it as ambiguous, you're dropping off the  
23 first half of the sentence.

24 I don't think we've ever had an explanation as to  
25 why they continue to use the loan terminology throughout the

1 terms of use. Perhaps it's a matter dealing with the  
2 securities laws, the fact that this company is almost  
3 certainly operating unlawfully in terms of whether or not  
4 it's compliant with the securities law. We certainly don't  
5 have any assurance yet that they're doing anything to bring  
6 themselves into compliance because they still have not  
7 identified, apparently, anyone who's actually working on  
8 those issues as Mr. Blonstein is not yet doing those.

9 I think the notion that people understood what was  
10 being done with all of these subsequent terms of uses and  
11 these claims about transferring ownership and so forth, I  
12 think that's really a very highly debatable point, even  
13 without the confusions from Mr. Mashinsky's terms of his  
14 discussions and perhaps at a later hearing with some of the  
15 other issues that may come in some more. We weren't party  
16 to those and I didn't really think about --

17 THE COURT: Let's deal --

18 MS. CORDRY: -- trying to get evidence.

19 THE COURT: Ms. Cordry, let's deal with the  
20 evidence in the record today.

21 MS. CORDRY: Yes, and I am.

22 THE COURT: Nobody put any evidence in the record  
23 about what Mr. Mashinsky did or didn't say.

24 MS. CORDRY: I understand. I understand that, but  
25 I think even without that, I think the terms of use that are

1       there in the main remain extremely confusing, ambiguous.  
2       Quite clearly, if they had been trying to pull these out and  
3       make these really clear that people would understand there  
4       were a lot simpler ways they could have written these  
5       documents, Now, and I do think you can entrust your assets  
6       to someone and give them a full authority to sell it,  
7       including transferring the ownership of it, and still retain  
8       my own right of ownership. I think that's entirely possible  
9       to do.

10               All of that said, the one thing I would agree with  
11       the Committee and Mr. Blonstein and the Debtor on is that  
12       from the earliest days of these documents, people did say  
13       you can sell my assets in order to carry out the Earn  
14       Program. I mean, that's really the essence of the Earn  
15       Program. I have to give you some degree of authority to use  
16       my assets and to sell them in order to make the company work  
17       and to operate and to be able -- that's what they were  
18       paying --

19               THE COURT: They had -- they were in -- it was a  
20       lending platform. They had to deploy the assets --

21               MS. CORDRY: Correct.

22               THE COURT: To be able to earn something they  
23       could share with account holders.

24               MS. CORDRY: Correct, and that, I think is  
25       something that far predates all of these claims about



1 transferring ownership. It is this point that I can lend  
2 you my asset and I can tell you, you can use it, sell it,  
3 pledge it, whatever, and when I want it back, you're going  
4 to give it back to me. That was -- that is part of the  
5 bargain that I was striking with you that yes, I am --  
6 whatever kind of transfer I'm making it to you, it is within  
7 the context that you will give me back my asset whenever I  
8 ask for it.

9 THE COURT: No, they would give back --

10 MS. CORDRY: -- timetable.

11 THE COURT: Not the. There was no commitment to  
12 give back the same Stablecoin that somebody -- you would get  
13 a distribution, you'd be repaid in kind.

14 MS. CORDRY: Exactly. I was not meaning that you  
15 would get back the exact, but that I would get back my  
16 assets.

17 THE COURT: Isn't that significant that there was  
18 no commitment to pay back the specific assets? If you  
19 continue to have ownership of the assets and you deposit it  
20 and was there something in there that says you got to give  
21 me back exactly what I -- you know, the same Bitcoin, the  
22 same Stablecoin? No. You're going to pay us back in kind.

23 MS. CORDRY: I agree, but I don't think that's  
24 inconsistent with saying that I'm still retaining rights in  
25 what I transfer to you. But there is rights to sell and

1 that's, I guess, where I'm --

2 THE COURT: They retained a contract right. They  
3 retained a contract right to receive back in kind whatever  
4 form of crypto they deposited. That's all well and good  
5 until they go bust.

6 MS. CORDRY: Right. But, and I think that's part  
7 of what they're saying here is we want the right to sell but  
8 we're not -- we don't want to acknowledge the fact that that  
9 right to sell was given in the context of you had to give me  
10 back what -- the kind of coin I deposited with you. But my  
11 bottom line is, I guess I would agree that I think they  
12 probably can sell this within that context of that original  
13 authority.

14 What I would hope the Court would do is make the  
15 narrowest possible decision it can because I think it  
16 doesn't necessarily have to decide the ownership in the  
17 context of this motion, because I think that right to sell  
18 stands of its own authority apart from the transfer of  
19 ownership because they were selling that long before they  
20 put all this language in there about transferring ownership  
21 and control and so forth.

22 In terms of whether they should do it at this  
23 point, I have a number of the same concerns that the Trustee  
24 does. The liquidity -- they said at the end of October,  
25 they had \$172 million. At a \$20 million rate -- burn rate,

1 that's still \$72 million at the end of March. We have the  
2 GK8 sale that's going to go through presumably in a very  
3 short order; gives them another month-and-a-half to two  
4 months of liquidity.

5 To the extent -- I know a number of my clients  
6 were concerned that perhaps there should be a sale now to  
7 deal with any potential fallout from all the turmoil in the  
8 crypto market, but it sounds like they're very confident  
9 that there will be no issue with being able to sell this at  
10 any point they want to and re-buy it at the same point,  
11 which in fact kind of makes you really wonder why should I  
12 sell it if I'm going to re-buy it again to make this plan  
13 work?

14 Our motion or our position in the objection stated  
15 was if there was really a need to sell it and if there's  
16 some valid basis to sell it at this moment, as opposed to  
17 some later point when there actually is a liquidity crunch,  
18 it should at least be held in escrow in order to make sure  
19 that if there are further developments with other issues in  
20 the case that would throw more light on this when the  
21 examiner's report comes out in full, you know, and so forth  
22 that --

23 THE COURT: May I ask you this, Ms. Cordry?

24 MS. CORDRY: Yes. Sure.

25 THE COURT: If the Court determines that the Ear

1 assets including Stablecoin are property of the estate,  
2 could you point me to any authority or cases that say no,  
3 let's separate this and put this pot in escrow? I mean,  
4 it's -- it becomes, you know, at that point the assets of  
5 the estate becomes somewhat fungible and certainly to the  
6 extent there in fiat currency, it's fungible. Yes, there  
7 are limits and restrictions on what a Debtor in a Chapter 11  
8 proceeding can do with it. It's not as if they get this \$18  
9 million and they're off to Las Vegas or Monte Carlo with it.

10 MS. CORDRY: I understand.

11 THE COURT: That's the ticket to jail.

12 MS. CORDRY: For sure. I think the Court has its  
13 general 105 authority, which we've been told is the best  
14 authority in the world to hold these funds if only because  
15 if there was --

16 THE COURT: Boy, I bet you've argued plenty of  
17 times that that 105 doesn't give a bankruptcy judge a lot of  
18 authority to do anything.

19 MS. CORDRY: And I've generally been overruled on  
20 that, Your Honor. I have been told, as I say, that I think  
21 it's the best authority in the world is that Section 105  
22 authority. I think that certainly gives you the power to  
23 hold it there just to ensure that if there are further  
24 developments, if there are --

25 THE COURT: I'm really not trying to cut you off,

1 but do you have any last points you want to make?

2 MS. CORDRY: I think that's really it, because I  
3 think, you know, the other point is really would just like  
4 to see where this case is going and that's part of the  
5 development as well.

6 THE COURT: Me, too.

7 MS. CORDRY: If there really is going to be an  
8 operating company that can comply with securities laws, then  
9 we'd like to see that and that would make us a lot more  
10 confident about having this money being spent. Thank you.

11 THE COURT: And the sooner that happens, the  
12 better off everybody will be.

13 MS. CORDRY: Exactly, because we --

14 THE COURT: And I think Kirkland and the Debtors  
15 agree with that as well. I mean, it's not -- and that's  
16 what strongly counsels against putting this off for months  
17 before a decision is made. We've got to move forward, in my  
18 view. I made this point to Ms. Cornell. There's been  
19 plenty of notice -- to Ms. Milligan, I made this point.  
20 There's been plenty of notice from day one that these were  
21 gating issues. Anything else, Ms. Cordry?

22 MS. CORDRY: I think -- on the same basis, though,  
23 it's been clear from day one that whether this Debtor is  
24 going to come into compliance with the securities law is  
25 another gating issue and that has not come to the fore at

1 all yet. We have not commenced those discussions.

2 THE COURT: Frankly, they're not taking any  
3 deposits or lending any money or deploying assets. I'm not  
4 --

5 MS. CORDRY: Presumably -- yes. Presumably they  
6 will be.

7 THE COURT: All right.

8 MS. CORDRY: -- they reorganize.

9 THE COURT: Somebody will be, either a buyer or  
10 where the Debtor going forward will have to be in compliance  
11 with all state regulation. Thank you very much, Ms. Cordry.

12 MS. CORDRY: Anyone else want to be heard?

13 MR. KHANUJA: Your Honor, this is Kulpreet  
14 Khanuja. I'm a pro se creditor. I'm not sure if I'm  
15 allowed to speak, but it --

16 THE COURT: Yes, you can. Go ahead. Please.

17 MR. KHANUJA: Thank you, Your Honor. So Your  
18 Honor, I do not want to comment anything on the sale of the  
19 assets themselves, but rather I want to make a comment on  
20 the ownership of assets as mentioned by Mr. Nash. Now Your  
21 Honor, some of these arguments I'm going to make are already  
22 in my Docket 1346 with a hearing scheduled on the 20th of  
23 December.

24 Now, Mr. Nash mentioned the legal effects of the  
25 terms of use of the binding nature of contracts and how 55

1 percent of people signed up terms of use Version 1 to 5 and  
2 the remaining for terms of 6 (audio drops). Now, Your  
3 Honor, with regards to the terms of use Version 1 through 5,  
4 even Celsius itself was not being compliant with its own  
5 terms of use.

6 Now, the terms of use wasn't Version 1 states that  
7 in Paragraph 31 if there is any changes, any significant  
8 addition, deletion, subtraction to the terms of use it will  
9 provide the customers proper notice and details as to what  
10 specifically has been changed or altered. But then between  
11 1 through 5, there was no notification provided to the  
12 customers.

13 THE COURT: Let me ask you this. May I ask you  
14 this? Because I'm looking at Version 2 and it included --  
15 I'll read only a portion of the language. "You grant  
16 Celsius the right subject to applicable law without further  
17 notice to you to hold the digital assets available in your  
18 account in Celsius' name or in another name and to pledge,  
19 re-pledge, hypothecate, re-hypothecate, sell, lend or  
20 otherwise transfer or use any amount of such digital assets  
21 separately or together with other property" -- and then this  
22 is the key -- "with all attendant rights of ownership."

23 MR. KHANUJA: Your Honor --

24 THE COURT: That's Version 2 and that language  
25 seems to say, we own it. We, Celsius, own it.

1 MR. KHANUJA: Yeah, so Your Honor, if I may answer  
2 that. So between Version 1 and 2, this is a material  
3 change. And first of all, based on Version 1, where they  
4 say they are supposed to inform the customers, they didn't  
5 do that. That's one.

6 The second thing is, you also read that it says to  
7 hold all assets, to hold customers' assets and pursuant to  
8 earning rewards, they're saying they can pledge and re-  
9 hypothecate and all of those things, but this is similar to  
10 our securities lending with Fidelity or eTrade. It's not  
11 granting total and complete ownership of the assets. That's  
12 one.

13 But again, it specifically says to hold your  
14 assets, and in the subsequent versions, Version 5 and 6, it  
15 says transfer of rights of your assets or claim to ownership  
16 -- claim to ownership of your assets. So there's a very  
17 significant difference in the language.

18 THE COURT: All right, thank you very much.

19 MR. KHANUJA: Your Honor, I would also want to  
20 take two more minutes. The --

21 THE COURT: Okay.

22 MR. KHANUJA: Mr. Nash also mentioned, pointed out  
23 that out of 600k (audio drops) only 40 people have objected.  
24 Mr. Nash mentioned that they're spending around \$15, \$16  
25 million a month. Most of those have (audio drops) have than



1 10,000 of that amount to be (audio drops) to file  
2 objections. Many have (audio drops) supporting the  
3 objections, but not (audio drops).

4 THE COURT: Let me just say, I'm clear, very  
5 clear, that there are many pro se creditors objecting, so I  
6 don't put weight that it's -- is it only 40? I don't think  
7 so, but that's -- okay. I have that point for sure.

8 MR. KHANUJA: Finally, both Mr. Borenstein -- I'm  
9 sorry, Blonstein and Mr. Ferraro in their depositions, they  
10 admitted that in their depositions that certain (audio  
11 drops) sections of the terms of service were unclear and  
12 ambiguous. Now, Mr. Ferraro claimed ignorance on a bunch of  
13 items and Mr. Blonstein also claimed he wasn't involved in  
14 the terms of service, so he should have been as part of  
15 (indiscernible). Mr. Ferraro in response to my line (audio  
16 drops) mentioned that he actually viewed the loan language  
17 and terms of service as kind of a lien on (audio drops)  
18 assets.

19 But Your Honor, a lien actually works against --  
20 doesn't work against a creditor. In fact, a lien -- a  
21 creditor has a lien on the assets, not the other way around.  
22 Secondly, even if it was a lien, it doesn't transfer  
23 ownership. Similarly, Mr. Blonstein accepted that the terms  
24 were unclear to him, having read it again, and he can  
25 understand the customer viewpoint. But -- so there's a lot

1 of lot of ambiguity and secondly regarding ownership of  
2 assets, they both admitted that yes, they can see the view -  
3 - the point of view of the customer.

4 THE COURT: Okay, thank you very much. Are there  
5 other people who wish to be heard in support of the  
6 objections?

7 MR. PELED: Yes, Your Honor. This is Arie Peled  
8 of Venable LLP on behalf of creditor Ignat Tuganov. Thank  
9 you, Your Honor. Our client is an Earn customer with  
10 Stablecoin holdings and our objection is filed under Docket  
11 No. 1495. The position that we've advanced has been  
12 somewhat touched upon by the regulators but our position is  
13 pretty straightforward, which is that the Debtors' claim to  
14 ownership of the Earn assets as we've heard here today is  
15 based solely on the terms of use.

16 And the examiner is currently tasked with  
17 investigating facts that would help with parties'  
18 determination whether or not a potential Ponzi scheme was  
19 done by the Debtors and the Debtors asked the Court to  
20 essentially assess their terms of use in a vacuum before the  
21 parties have a benefit of that report.

22 Now, originally the two bases for that -- and I  
23 think I heard Your Honor discussing today was essentially  
24 the liquidity issue and the sale issue. And we've just  
25 heard that liquidity is likely not a concern until March,

1 which is long after, two months after the examiner's report  
2 is scheduled to come out. And in addition we just saw  
3 notice of the GK8 sale, which should provide a couple of  
4 more months of potential liquidity so that the liquidity  
5 issue should not be a reason not to wait a few weeks to see  
6 what the examiner's --

7 THE COURT: Mr. Peled, I'm going ahead and  
8 deciding who does it belong to, is the property of the  
9 estate or not. It has been a gating issue in this case from  
10 day one. I don't believe that that's an issue that the  
11 examiner is addressing. It's not within the scope of the  
12 examination. I understand Ms. Cornell, Ms. Cordry, you  
13 saying, well they don't have to sell it now. Now I will  
14 deal with the issue of whether to approve the sale, but the  
15 gating issue, I am going to decide now. It's ripe. It's  
16 been every -- on everybody's table right from day one, is  
17 property the estate. Do you have anything you want to add  
18 on that issue?

19 MR. PELED: Yes, thank you, Your Honor. I just  
20 wanted to touch on the fact that the determination of  
21 whether or not it is property of the estate, and that's what  
22 I'm getting at, is based on the terms of use and the Ponzi  
23 investigation will -- may determine that the terms of use  
24 are not enforceable, not valid.

25 THE COURT: Are you saying that -- are you saying

1 it's been a Ponzi scheme from day one, Mr. Peled?

2 MR. PELED: No, I'm saying we don't know. That's  
3 what I'm saying. I'm saying we may find out in three weeks  
4 or in a month, not in an indefinite time, but actually --

5 THE COURT: I have that point.

6 MR. PELED: -- short time. Okay.

7 THE COURT: Are there any other -- are there any  
8 other points you want to make?

9 MR. PELED: The only point we wanted to make that  
10 -- if the case is determined to be a Ponzi scheme which Your  
11 Honor already has, it would have a substantial effect on the  
12 rest of this case and that's why we ask Your Honor to wait  
13 until the examiner's report, but I understand Your Honor  
14 already has that point.

15 THE COURT: Okay. All right. Is there anybody  
16 else who wishes to be heard in support of their objection?

17 MS. SHEA: This is Virginia Shea on behalf of the  
18 New Jersey Bureau of Securities, from the law firm of  
19 McElroy, Deutsch and I just wish to correct the record. The  
20 Bureau submitted a response at Docket No. 1498. Thereafter,  
21 the Debtors submitted a reply at Docket No. 1578. And  
22 attached to that reply is an Exhibit A which summarizes all  
23 of the various objections that have been filed and there's  
24 just two incorrect summaries within that exhibit as to the  
25 Bureau's filing.

1 First, the Debtor stated that the Bureau took no  
2 position as to ownership of Earn assets. That is not  
3 correct. In the Bureau's response, it stated, "The Bureau  
4 currently takes the position that the Earn assets are  
5 customer property."

6 And the second correction is that the -- they  
7 purport that the Bureau asserted that the Earn Program was  
8 operated after the cease and desist order that had been  
9 issued by the Bureau, but the Bureau did not assert this in  
10 the response. Rather, the Bureau simply stated "The Debtors  
11 operated and marketed the Earn Program while violating New  
12 Jersey's securities law."

13 THE COURT: Ms. Shea, can you just give me the ECF  
14 docket number of your filing?

15 MS. SHEA: Yes. Our filing ECF is 1498.

16 THE COURT: Okay, thank you very much. Is there  
17 anything else you want to add?

18 MS. SHEA: Just that we join with the State of  
19 Texas' position.

20 THE COURT: Thank you, Ms. Shea. Anybody else who  
21 wishes to be heard in support of an objection?

22 MR. CREWS: Yes, Your Honor. Can you hear me?

23 THE COURT: Yes.

24 MR. CREWS: My name is Cameron Crews, pro se  
25 creditor, and in order for ownership of our assets to be

1 surrendered, what we received in consideration was the  
2 opportunity to earn yield. But what the Debtors did not  
3 disclose to us was that they were not earning yield with the  
4 resources provided to them. They were a failed venture.  
5 They did not disclose that to us; therefore, we never had  
6 the opportunity to actually earn.

7 We now sit here today having lost half of our  
8 assets that we entrusted to them and Your Honor has said  
9 that they would go to jail if they were to spend the  
10 approved assets in Vegas. I would say that would be a  
11 better use of our assets because we at least have a chance  
12 of winning. This company has never been profitable.  
13 They've never established any reliable streams of revenue.  
14 They've just lost money entrusted to them. And the fact  
15 that they have not produced a plan now five-and-a-half  
16 months later is indicative that they don't have reliable  
17 revenue streams and we the creditors have entrusted our  
18 funds to them.

19 They have lost all resources entrusted to them  
20 except for the remaining creditor funds. We just want  
21 what's left back in an equitable way and we believe the UCC  
22 for administrative expediency has taken the position that  
23 the Debtor has ownership of our assets. We vehemently  
24 object to that, but if it's what's needed to protect our  
25 interests, then fine. But we feel at least in terms of a

1 procedural sense, it would be a terrible precedent if  
2 ownership of our assets was taken away from us but we've  
3 received nothing in return. Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Crews. Anybody else  
5 want to be heard in support of their objections?

6 MS. FRANKEL: Can I be heard? This is Deborah  
7 Frankel. I'm a creditor.

8 THE COURT: Sure, go ahead, Ms. Frankel.

9 MS. FRANKEL: Hi. I just want to say that, you  
10 know, I can't even believe that nobody submitted all the  
11 videos of the AMAs, where Alex was saying there are coins,  
12 there are coins, there are coins at every time and everybody  
13 submitted tons of those videos at the beginning of this  
14 bankruptcy. I would have thought that you would have read  
15 them or you know, listened to them and watched them and seen  
16 what's really been going on here. It's not just 40 people  
17 objecting. I don't even know how to make an objection.

18 I have a ton of money in there and this whole  
19 thing is just unbelievable. And that technicality that  
20 nobody submitted those videos right at this time, when -- is  
21 amazing. I mean, I'm surprised that nobody did, but I  
22 didn't know that rule and I saw tons of them going through  
23 there. I thought you were aware of them. I thought this  
24 was a slam dunk case of, you know, the Earn stuff belongs to  
25 us because some little thing in the terms and conditions on

1 the 39th page, you know, said something where (audio drops)  
2 every week to us that they were our coins.

3 I just needed to say that among the other things,  
4 and there are hundreds of thousands of us that are  
5 incredibly upset about this whole thing, you know. So --

6 THE COURT: Thank you, Ms. Frankel. Anybody else  
7 wish to be heard?

8 MR. PORTER: I would, Your Honor, if it's all  
9 right.

10 THE COURT: Go ahead, Mr. Porter.

11 MR. PORTER: Good day. You know, I hear loud and  
12 clear that the terms of service were a checkmark for all of  
13 us to do and the changes were certainly not apparent to  
14 anybody. And if I could go to another industry where you  
15 buy cigarettes and there's warnings on the box, the  
16 president, the CEO, the head of Philip Morris doesn't come  
17 out and say, oh, ignore what's on the side of the box and  
18 basically for all intents and purposes this is what this  
19 company was doing every week on a weekly basis, right up  
20 until the day of the filing, sir.

21 They were soliciting funds to the day of the  
22 filing, the CEO of this company. Thank you very much, Your  
23 Honor.

24 THE COURT: Thank you, Mr. Porter. Anybody else?  
25 Mr. Herrmann, I saw you briefly on the screen. Do you wish



1 to speak?

2 MR. HERRMANN: Yes, Your Honor. This is Immanuel  
3 Herrmann, pro se creditor. So I'll start out by just  
4 respectfully asking if you would consider reopening the  
5 opportunity to submit evidence. Many of us have submitted  
6 declarations, sworn declarations. There's a lot in the  
7 record. We only had essentially 30 seconds to submit  
8 anything into the record.

9 THE COURT: I'm not reopening the record, Mr.  
10 Herrmann. That's what this hearing was about. I understand  
11 that you're a pro se creditor and there are many other pro  
12 se creditors. But I follow the rules. Evidence was  
13 submitted in support and that's where we are. Anything you  
14 want to add?

15 MR. HERRMANN: Yes, I have things about my  
16 objection that are, you know, just from the filing itself  
17 and the contract itself. So, you know, one, I just wanted  
18 to note that all of the -- I would say pretty much every pro  
19 se creditor knows there aren't enough coins there. We  
20 differ with the UCC or at least I do. You know, I differ  
21 with the UCC on the idea that, you know, it guarantees us  
22 maximum recovery to be property of the estate because  
23 fundamentally we don't trust the Debtor nor the UCC to drive  
24 a process that will maximize value for creditors.

25 And so part of this has been trying to ensure that

1 value is maximized for creditors. Nobody -- there's a lot  
2 of implications in these filings that creditors somehow  
3 believe they're going to get 100 percent back if our coins  
4 are not property of the estate. Nobody thinks that. What  
5 we do think is that it's profoundly unfair for some groups  
6 to fight for 100 percent back and specifically, there's many  
7 cases -- we were talking earlier in this hearing about, you  
8 know, situations about contractual defenses and all that.  
9 There's many people where there's a label of Earn on their  
10 account, which may have been completely in violation of the  
11 plain contract terms, for example, and that are similar to  
12 withhold.

13 So any kind of sweeping ruling that would limit  
14 any kind of those defenses, if we go down the property  
15 rights rabbit hole, which, you know, I was hoping we  
16 wouldn't do it this way, but I feel like it's going to be  
17 difficult no matter how the ruling goes because if it is  
18 property of the estate, I don't think there can be a  
19 sweeping determination based on the contracts that every  
20 user, you know, is similarly situated.

21 There are many, many claims, suspended accounts,  
22 my claim for return to collateral, et cetera. That's a  
23 whole rabbit hole. So that's coming, if we get a ruling  
24 that the coins are generally property of the estate. So  
25 that's one thing I wanted to note.

1           You know, another thing, a point I made in my  
2       argument, in my filing, is that the Debtor had a sale and  
3       repurchase agreement or a repo agreement in the United  
4       Kingdom. So they were familiar with that sort of agreement.  
5       They cannot argue that they couldn't have structured it that  
6       way. They were intimately -- their counsel clearly was  
7       familiar with it. They made a choice to call it a loan,  
8       distinct from a repo agreement.

9           And so there's a lot of complicated technical  
10      arguments I saw about whether you can have a loan. You  
11      know, they were saying maybe in a securities context, maybe  
12      in some others, but I wanted to correct the record around my  
13      arguments around a car. They mischaracterized in their  
14      reply, you know, car -- you know, my argument around it's,  
15      you know, like loaning your car. What I have said is, look,  
16      the only way to do this with a car would be a repo agreement  
17      and generally cryptocurrency, particularly Bitcoin, is  
18      property.

19           So they decided to call it a loan and not do a  
20      repo agreement. I don't know why. Maybe it was for tax  
21      purposes or whatever, but it created ambiguity. There's  
22      lots of ambiguities that have come up. That's just one  
23      example of ambiguity. I agree with Ms. Mulligan, Ms.  
24      Cordry. I fully join in all of their arguments just for the  
25      record that a creditor does. You know, and I think there's

1 -- you know, there's also just, I think that there's  
2 potentially issues with ipso facto clauses here that were  
3 mischaracterized as individual defenses.

4 I don't see how a creditor as an individual  
5 defense could raise something like an ipso facto clause in  
6 the contract. That seems to me a global defense for the  
7 entire contract. So I just think there's a lot of  
8 corrections that probably need to be made to the response  
9 that the Debtor filed. And yeah, I mean, you know, I just  
10 also want to note that, you know, the timeline here was just  
11 extraordinarily rushed. I mean, we're all doing our best,  
12 but there's a lot that we were not able to get into our  
13 filings or to ask the Debtor about and even just based on  
14 the contract itself it's not, you know, in my view clear and  
15 unambiguous. Like that's -- period, bottom line.

16 And you know, one other thing I'll state is that  
17 I'm really stunned that regulators are not in touch with the  
18 Debtor and I will be filing a motion for the appointment of  
19 a Chapter 11 mediator today, so when we have a recess or  
20 something, I'll get that in and serve it and email it to  
21 chambers. But I think that, you know, I think that  
22 regardless of how you rule it will not quell my dissent or  
23 creditor dissent and grave concerns about this process.

24 THE COURT: Thank you, Mr. Herrmann. Anybody else  
25 wish to be heard?

1 MR. DeGIROLAMO: Yes, Your Honor, Tony DeGirolamo,  
2 just briefly please.

3 THE COURT: I only allow somebody to speak once  
4 during this, so I've already heard from you.

5 MR. DeGIROLAMO: And I questioned a witness. I  
6 didn't close, Your Honor.

7 THE COURT: All right. Go ahead, Mr. DeGirolamo.  
8 Go ahead.

9 MR. DeGIROLAMO: Thank you, Your Honor. I mean, I  
10 obviously know that you've read all the briefs. I'm not  
11 going to rehash the whole ambiguous contract argument that  
12 I've made on behalf of my client. And I also don't want to  
13 rehash, you know, all of the arguments about the use of the  
14 funds and whether or not they're going to be able to  
15 repurchase Stablecoin at some point in the future.

16 THE COURT: So rather than telling me what you're  
17 not going to repeat, tell me what you want to tell me that I  
18 haven't heard already.

19 MR. DeGIROLAMO: That's fine, Your Honor. The one  
20 thing that I haven't heard and I appreciate Your Honor's  
21 desire for an equitable distribution in this case. That is  
22 the basis for bankruptcy. And I understand that this is a  
23 gateway to plan confirmation, but the one thing I haven't  
24 heard anyone speak to is the deficiencies in the Debtors'  
25 operation identified by the examiner, the move --

1 indiscriminate moving of coin from one wallet to another to  
2 cover shortfalls or if there are overages, move it from one  
3 wallet to another.

4 And it seems to me that if there's going to be  
5 anything for this Debtor to sell or anything for this Debtor  
6 to reorganize around, that deficiency must be remedied.  
7 They can't continue to operate the way they did before  
8 bankruptcy case was filed. And so to me that's supposed --

9 THE COURT: Mr. DeGirolamo --

10 MR. DeGIROLAMO: -- no one spoke to.

11 THE COURT: Mr. DeGirolamo.

12 MR. DeGIROLAMO: Yes, sir.

13 THE COURT: This is a hearing to determine the  
14 ownership of the Earn assets. There may be another time to  
15 address the deficiency in their operations.

16 MR. DeGIROLAMO: That's fine, Your Honor. As I  
17 said, there was as much testimony about what the money was  
18 going to be used for as whether or not it was owned by the  
19 Debtor, so it appeared to me that these issues were fair  
20 game for today. With that, I don't have any other comments.

21 THE COURT: All right. Anybody else wish to be  
22 heard?

23 MR. GEORGIU: Yes, Your Honor. May I speak?

24 THE COURT: And who is that?

25 MR. GEORGIU: This is George Georgiou, pro se

1 creditor.

2 THE COURT: Yes, please, go ahead.

3 MR. GEORGIU: Thank you very much. I have a  
4 Docket No. 1517. I want to ask, if the Court determines  
5 today that the terms of use are adequate to be used, then I  
6 have a case where I withdrew my (indiscernible) pre-pause  
7 and pre-filing of Chapter 11, passed all the KYC, I passed  
8 all the verifications. I've got emails from Celsius saying  
9 that my withdrawal was initiated. This was all done under  
10 Section 11 of the terms of use where I basically exercised  
11 my call option to withdraw my funds. At that time, I  
12 stopped receiving any earn and I was put on -- in a pending  
13 situation until October 6th where they canceled me back into  
14 Earn.

15 I was only in Earn for five hours for the entire  
16 four months and I didn't receive but \$3 of earn on a million  
17 dollars of assets. So how -- am I going to be now in Earn  
18 or am I part of the estate? I don't know how the Debtor is  
19 going to treat me. Following the terms of use, am I part of  
20 the estate or not?

21 THE COURT: May I ask you this?

22 MR. GEORGIU: Sure.

23 THE COURT: Are you listed in the schedules as a  
24 creditor? And if so, in what amount?

25 MR. GEORGIU: I'm listed in Earn for the amount

1 of about 26.5 Bitcoins.

2 THE COURT: Okay, I can't -- I'm not sure that I -  
3 - there's no response that I can give. I understand --

4 MR. GEORGIU: Right.

5 THE COURT: -- the issues you're raising.

6 MR. GEORGIU: I mean --

7 THE COURT: Is there anything else you'd like to  
8 add?

9 MR. GEORGIU: No, I just want to put it there and  
10 I just reserve my right later to like file an objection or,  
11 I don't know, some kind of motion.

12 THE COURT: Okay.

13 MR. GEORGIU: Thank you very much.

14 THE COURT: Thank you very much. Anybody else who  
15 wishes to be heard?

16 MR. FRISHBERG: Yeah, Daniel Frishberg, pro se.

17 THE COURT: Go ahead, Mr. Frishberg.

18 MR. FRISHBERG: I agree with everything that the  
19 regulators have stated. I believe this is an improper  
20 attempt to claim all of Earn assets and I do -- as Mr.  
21 Herrmann mentioned, I do have some serious concerns about  
22 the whole very rushed timeline for the depositions and the  
23 discovery process. I do not believe there was sufficient  
24 discovery to rule on Earn as I believe Mr. Ignat Tuganov's  
25 attorney stated, there is potential that Celsius is a Ponzi



1 scheme and I do believe that it is worth investigating  
2 because if it was a Ponzi scheme, the contract is  
3 unenforceable and illegal.

4 And in that case, I believe that would not be  
5 property of the estate, and to preemptively rule it is not  
6 good, especially for a sale of assets because nobody wants  
7 to buy the sale of assets with the potential for a clawback  
8 due to a Ponzi. I do not think it's in creditors' best  
9 interest to rush this. While costs are a major concern, it  
10 may be a bit better to just wait a month for the examiner's  
11 report which we already paid approximately \$10 million for  
12 to come out so we can determine what exactly went on at  
13 Celsius and if it is even a Ponzi scheme or if it's not a  
14 Ponzi scheme.

15 I do believe that the proper method for attaining  
16 Earn assets for everyone to determine if Earn assets are  
17 property of the state is a adversary proceeding. I believe  
18 it's Rule 7000 something. Regulators mentioned that.  
19 Custody and withhold for much smaller amounts, I believe  
20 like 15 million and like 50 million or whatever are having  
21 adversary proceedings while roughly a billion and a half  
22 dollars in Earn assets is being rushed through some very  
23 (audio drops) lack of deposition process on a short timeline  
24 that is basically trying to just shove it in under the wire,  
25 which in my opinion is a major due process issue. Thank

1 you. That is all.

2 THE COURT: Thank you, Mr. Frishberg. Anybody  
3 else wish to be heard?

4 MS. GALLAGHER: Yes, I would wish to be heard.

5 THE COURT: Go ahead.

6 MS. GALLAGHER: Okay, so my name is Rebecca  
7 Gallagher and I'm a pro se creditor. You mentioned, Judge,  
8 that you've never listened to any of Mashinsky's videos, so  
9 I have one queued up here to play to you which will just  
10 give you --

11 THE COURT: I'm sorry -- no. Ms. Gallagher, the  
12 evidence is closed. I'm not reopening the evidence. There  
13 may be some other issue in this case where that becomes  
14 relevant, but I deal with the record that's made.

15 MS. GALLAGHER: This is --

16 THE COURT: Ms. Gallagher.

17 MS. GALLAGHER: Right, this is on --

18 THE COURT: Ms. Gallagher, do not --

19 MS. GALLAGHER: Yes?

20 THE COURT: -- play the video.

21 MS. GALLAGHER: Okay, Your Honor.

22 THE COURT: You will be cut off. You will be cut  
23 off from the Zoom if you do.

24 MS. GALLAGHER: Okay, Your Honor. It is on a  
25 docket, though, Docket 1559.

1 THE COURT: What is 1659?

2 MS. GALLAGHER: Sorry, the video is at the --

3 THE COURT: Okay.

4 MS. GALLAGHER: -- end of docket --

5 THE COURT: It wasn't introduced into evidence  
6 today during this hearing. If there's any points you want  
7 to make about the evidence that came in or the arguments  
8 that have been made, now is the time to do it. The  
9 evidence, the record is closed and I'm not going to hear any  
10 additional evidence.

11 MS. GALLAGHER: Okay, Your Honor.

12 THE COURT: Does anybody else wish to be heard?

13 MR. LINDSAY: Yes, Your Honor. Your Honor, Mark  
14 Lindsay for several Earn account holders, Stuart McLean,  
15 Keith and Jennifer Riles. Your Honor, I've obviously heard  
16 all the other objectors' arguments and I will do my best not  
17 to rehash anything and will rest on our pleadings in that  
18 regard for arguments, but I did want to point out, Your  
19 Honor, that I found it surprising that to me, my  
20 understanding was the main gate keeping issue for today's  
21 hearing was a determination of whether or not these terms of  
22 use were clear and unambiguous.

23 And the Debtor set this hearing up to be based on  
24 that finding, and quite frankly, unless I'm mistaken, I  
25 heard very little about that issue today. The Debtors argue

1 and the evidence that they put on today was basically  
2 regarding the acceptance of the terms of use, who accepted  
3 what version, how many people accepted the versions. What  
4 they don't talk about is, so what was accepted.

5 THE COURT: I think they did --

6 MR. LINDSAY: And there's no record.

7 THE COURT: Excuse me, Mr. Lindsay. There was  
8 what is ECF Docket No. 393, the Exhibits A-1 through A-8, is  
9 a binder with all of the terms of use. They were all filed  
10 as an exhibit to a Mashinsky declaration which was ECF  
11 Docket No. 393.

12 MR. LINDSDAY: Yes, Your Honor.

13 THE COURT: And so part of the evidentiary record  
14 today is each and every version of the terms of use or Earn  
15 accounts that was introduced in evidence today, I have that.  
16 The briefs are addressed to the issue of what -- issues  
17 whether the terms of use were clear and unambiguous. I'm  
18 taking the matter under submission. I'm not deciding the  
19 matter from the bench today, but all of that is in evidence  
20 and that was the main thrust of both the Debtors' brief, the  
21 Committee's was styled as a limited objection, and so that  
22 is the central focus of what I've been being asked to  
23 decide.

24 MR. LINDSAY: Understood, Your Honor, and I'm  
25 aware that all of the terms of use are of record, including

1 red lines. The point I was making is that although it was  
2 brought up today that there's -- that there is in fact, and  
3 it's been pled at length by the objectors, conflicting  
4 language in those terms of use, there was no attempt to  
5 reconcile by the Debtors, you know, why that, despite that  
6 conflicting language, why those terms are still clear and  
7 unambiguous in each, regardless of which terms of use or  
8 which version is adhered to, why all of the Earn account  
9 users should be held to their version of it, given the  
10 distinctly different language and interpretations that can  
11 come from that very language.

12 THE COURT: The Debtors --

13 MR. LINSDAY: And I'll leave it at that.

14 THE COURT: The Debtors' position is that each of  
15 the account holders, current account holders are subject to  
16 Version 8, the last version and that each of the terms, each  
17 version indicated that it could be updated. That's not the  
18 exact language, but their argument is that eight -- Version  
19 8 is the applicable version. Obviously there's been a lot  
20 of discussion, briefing, and evidence about what have been  
21 the changes in the language of each successive version. I  
22 asked some questions about that myself. So thank you, Mr.  
23 Lindsay.

24 Anybody else wish to be heard? All right, hearing  
25 no one, does the Debtor wish to reply, respond?

1 MR. NASH: Pat Nash from Kirkland and Ellis for  
2 the Debtors. Not unless Your Honor has any questions.

3 THE COURT: No, I don't. Mr. Colodny?

4 MR. COLODNY: Not unless you have any questions,  
5 Your Honor.

6 THE COURT: The Court is going to take the matter  
7 under submission. We've got a busy week, so it won't be  
8 this week, I don't think, when the Court rules on it, but I  
9 have in mind the issues and the arguments. Thank you very  
10 much. The Court is in recess for a half hour.

11 MR. NASH: Your Honor, is it okay for those of us  
12 who --

13 THE COURT: Yeah, we're doing -- it's Zoom. Go  
14 ahead, Mr. Nash. I cut you off. Are you going to stay here  
15 for --

16 MR. NASH: It'll be a lot easier for us.

17 THE COURT: You absolutely can.

18 MR. NASH: Thank you, Judge.

19 MR. COLODNY: Thank you, Your Honor.

20 THE COURT: Okay. All right.

21 (Recess)

22 CLERK: All right. Starting the recording again  
23 for December 5, 2022 at 2 p.m. calling the following cases.  
24 Celsius Network LLC case number 22-10964; Celsius Network  
25 Limited, et al v. Stone, et al, case number 22-1139; and

1 Celsius Network Limited, et al v. Prime Trust, LLC, case  
2 number 22-1140. All right. Are any of the -- we'll just  
3 keep the appearances for this morning's hearing. Are there  
4 any parties that are here for either of the adversary  
5 proceedings?

6 MR. ROCHE: Yes, Kyle Roche on behalf of  
7 Defendants KeyFi and Jason Stone.

8 CLERK: Okay. Thank you, Kyle. Anyone else  
9 that's making an appearance for this afternoon's hearing and  
10 did not make an appearance this morning?

11 MAN: Good afternoon.

12 WOMAN: Yes, my name is --

13 CLERK: Okay. Let's do it this way. If you could  
14 raise your hand one at a time, and I'll just take each  
15 appearance in turn. All right. Mr. Adler, are you  
16 appearing also for this afternoon's hearing?

17 MR. ADLER: Yes, Deanna. I'm appearing. David  
18 Adler on behalf of certain borrowers from McCarter and  
19 English. And I will be speaking briefly with respect to  
20 exclusivity.

21 CLERK: Okay. Thank you. Ms. Gallagher, are you  
22 appearing for the afternoon hearing as well?

23 MS. GALLAGHER: I am just listening.

24 CLERK: Okay. All right. Thank you. All right.  
25 Mr. Leblanc?

1 MR. LEBLANC: Yes. Good afternoon. Andrew  
2 Leblanc of Milbank on behalf of certain Series B preferred  
3 holders, including Community First. And I may speak at this  
4 afternoon's hearing.

5 CLERK: Okay. Thank you. Trudy Smith?

6 MS. SMITH: Hi. Yes. Sorry. My video's not  
7 working. But yes, I am here on behalf of the Committee and  
8 the Prime Trust adversary.

9 CLERK: Okay. Thank you. Mr. Steel?

10 MR. STEEL: Hey, good afternoon. Howard Steel,  
11 Goodwin, on behalf of Prime Trust.

12 CLERK: Okay. Thank you. Deborah Kovsky?

13 MS. KOVSKY: Good afternoon. Deb Kovsky, Troutman  
14 Pepper on behalf of the Ad Hoc Group of Withhold Account  
15 Holders. I'm just speaking on the exclusivity motion.

16 THE COURT: Okay. Thank you. Mr. Dean Chapman?

17 MR. CHAPMAN: Yeah. Good afternoon. Dean Chapman  
18 from Akin Gump Strauss Hauer and Feld on behalf of the  
19 Debtors in the adversary proceedings.

20 CLERK: Okay. Thank you. Mr. De Las Heras?

21 MR. DE LAS HERAS: (Indiscernible) De Las Heras,  
22 pro se creator. I'll be speaking on the (indiscernible)  
23 motion.

24 CLERK: Okay. Elizabeth Scott?

25 MS. SCOTT: Good afternoon. Elizabeth Scott with



1 Akin Gump on behalf of the Celsius Plaintiffs in the two  
2 adversary proceedings.

3 CLERK: Okay. All right. Catherine?

4 MS. STADLER: Yes. Katherine Stadler of Godfrey  
5 and Kahn appearing on behalf of the fee examiner.

6 CLERK: Okay. Thank you. And I see Mr. Lazar is  
7 on as well.

8 MS. STADLER: Mr. Lazar represents the examiner.

9 CLERK: Oh, I'm sorry. Yes. Okay. Sorry to go  
10 out of order. You know what? Mr. Lazar, go ahead and make  
11 your appearance.

12 MR. LAZAR: Thank you. Vincent Lazar, Jenner and  
13 Block on behalf of the examiner. I believe that the  
14 examiner is (indiscernible).

15 CLERK: I'm sorry. I had to mute the courtroom.  
16 Go ahead, please.

17 MR. LAZAR: Vincent Lazar, Jenner and Block on  
18 behalf of the examiner, who is also on.

19 CLERK: Okay. Thank you. And then, Ms. Pillay, I  
20 think I see you there.

21 MS. PILLAY: Yes. Good afternoon. Shoba Pillay,  
22 the examiner from Jenner and Block. Thank you.

23 CLERK: All right. Thank you. Mr. Herrmann?

24 MR. HERRMANN: Yes, sorry. I was muted. Immanuel  
25 Herrmann, pro se Creditor. I will be speaking on

1 exclusivity.

2 CLERK: All right. Thank you. All right. Callie  
3 Swolier? Is that correct?

4 MS. SWOLIER: It's Swolier. I'm just listening.

5 CLERK: Okay. Thank you. All right. Mitch  
6 Hurley?

7 MR. HURLEY: Yeah. Good afternoon. Mitch Hurley  
8 with Akin Gump on behalf of Celsius.

9 CLERK: Okay. Chris?

10 MR. SONTCHI: Hi, Chris Sontchi, fee examiner.

11 CLERK: Okay. Thank you. James Lathrop?

12 MR. LATHROP: Good afternoon. James Lathrop also  
13 counsel for Prime Trust.

14 CLERK: All right. Thank you. Is that everyone  
15 that's on the phone? Is there anyone else on the phone  
16 that's going to be appearing at this afternoon's hearing and  
17 has not given their appearance?

18 MR. COOK: No, this is Lafayette Cook. I just  
19 will be listening.

20 CLERK: Okay. That's fine. Thank you. All  
21 right. Are the parties back in --

22 MS. BARR: Hi, this is --

23 CLERK: Yes, go ahead.

24 MS. BARR: I'm sorry. This is Christina Barr on  
25 behalf of Celsius for Lathman Watkins, and I will just be

1 listening.

2 CLERK: Okay. That's fine. If you're listening,  
3 there's no need to identify yourself.

4 MS. BARR: Oh, my apologies.

5 CLERK: It's just --

6 MS. BARR: Thank you.

7 CLERK: No, no reason to apologize. I know it's  
8 very confusing. Just if you're going to be speaking on the  
9 record this afternoon. All right. For the parties that  
10 have joined on Zoom, please one at a time please raise your  
11 hands if you're going to be speaking on the record this  
12 afternoon. Kyle Roche. All right. I see you lowered your  
13 hands. And are you going to be speaking on the record this  
14 afternoon?

15 MR. ROCHE: Yes.

16 CLERK: Okay. Just identify your -- state your  
17 appearance for the record.

18 MR. ROCHE: Yes. Kyle Roche on behalf of  
19 Defendants KeyFi and Jason Stone.

20 CLERK: Okay. Thank you. Josephine Gartrell?

21 MS. GARTRELL: Hello. It's Josephine Gartrell,  
22 Willis Towers Watson. I entered my appearance this morning  
23 but wasn't clear if I still needed to do it again this  
24 afternoon, but I will be speaking on the record.

25 CLERK: All right. Thank you.

1 MS. GARTRELL: Thank you.

2 CLERK: All right. Katherine?

3 MS. STADLER: Yes, Katherine Stadler, Godfrey and  
4 Kahn on behalf of the fee examiner. I will speak only if  
5 the judge has questions on uncontested matter number 5.

6 CLERK: Okay. Thank you. All right. Any  
7 additional parties that have joined the hearing and are  
8 speaking on the record this afternoon and have not given  
9 their appearance? Please raise your hand. Okay. Are the  
10 parties in the courtroom back? All right. I'm going to  
11 pause the recording for now. If anyone is going to be  
12 speaking this afternoon and has not given their appearance  
13 yet, please raise your hands and I'll take your appearance  
14 one at a time.

15 MR. FRISHBERG: Daniel Frishberg, pro se.

16 CLERK: Thank you. Is there anyone else?

17 MS. MILLIGAN: This is Layla Milligan. I don't  
18 have argument for this afternoon. I just wanted to note my  
19 appearance on the record.

20 CLERK: Okay. Thank you.

21 MS. MILLIGAN: Thank you.

22 MR. FRISHBERG: Daniel Frishberg again. I have a  
23 quick question. On the agenda, it says that we're going to  
24 be having the current motion first and then the motion to  
25 shortened notice on the current motion afterwards.

1 Shouldn't we be having the shortened notice motion first?

2 CLERK: Well, that's the judge's call as to what  
3 order he wants to go in.

4 MR. FRISHBERG: Okay. Thank you.

5 CLERK: I am not certain of that. Hi. Can the  
6 parties hear me in the courtroom?

7 MAN: (Indiscernible).

8 CLERK: Oh, you have to go accept. Can the  
9 parties hear me now in the courtroom?

10 MR. KWASTENIET: Yes, this is Ross Kwasteniet from  
11 Kirkland. Can you hear me?

12 CLERK: Yes, I can, Ross. Do we have the same  
13 appearances from this morning, or do we have additional  
14 appearances in the courtroom? If the parties can come up  
15 and just give their appearances.

16 MR. KWASTENIET: Yes. I wanted to note Patrick  
17 Nash and Ross Kwasteniet from Kirkland and Ellis as  
18 presenters for the 2:00 hearing.

19 CLERK: Okay. Thank you.

20 MR. KWASTENIET: Also, Your Honor, Mr. TJ  
21 McCarrick from Kirkland may present if we need to put on  
22 witnesses and the same witness Grace Brier.

23 CLERK: Okay. So TJ McCarrick is the party that I  
24 need to make a co-host? Is that correct? To present  
25 something.

1 MR. KWASTENIET: No, I think that we don't need to  
2 present. We don't plan to use the screen, so I don't --

3 CLERK: Okay.

4 MR. KWASTENIET: -- think we need co-host  
5 privileges, but thank you.

6 CLERK: Thank you. All right. Any additional  
7 parties in the courtroom that need to make an appearance?  
8 All right. Last call for appearances. Anyone else need to  
9 make an appearance, please do so at this time. We're going  
10 to get started. All right. I am going to assume that we  
11 are ready to go.

12 Please keep it -- please listen to the following  
13 announcements. All parties are strictly prohibited from  
14 making any recording of court proceedings whether by video,  
15 audio, screenshot or otherwise. Violation of this  
16 prohibition may result in the imposition of monetary and  
17 non-monetary sanctions. CLERK of the court maintains an  
18 audio recording of all proceedings, which constitutes the  
19 official record. Parties must state their name each time  
20 they speak on the court record. A party must join with a  
21 full first and last name to be admitted from the waiting  
22 room. Parties that join with initials, a partial name, a  
23 designation of iPhone, etcetera, will not be admitted.

24 THE BAILIFF: All rise.

25 THE COURT: Please be seated. All right. Good

1 afternoon. I know that this hearing was intended initially  
2 to be entirely by Zoom, but we didn't get finished with the  
3 morning very early so we'll go forward with it. The agenda  
4 for this afternoon, the second amended agenda for the  
5 hearing to be held at 2:00 is filed as ECF Docket Number  
6 1596.

7 MR. KWASTENIET: Good afternoon, Your Honor. For  
8 the record, it's Ross Kwasteniet from Kirkland and Ellis on  
9 behalf of the Debtors. We appreciate you accommodating the  
10 use of your courtroom this afternoon. I think many of us  
11 would've still been probably on the subway trying to get  
12 back to our offices, so appreciate that.

13 Your Honor, before I jump into the agenda, if I  
14 may, I just have one announcement to make, and it goes in  
15 the nature of a public service announcement. But the  
16 Debtors have become aware of a sophisticated phishing scam  
17 that appears to be targeting Celsius customers. At this  
18 point, we're not aware of any customers having fallen a  
19 victim to this scam, but if that is your situation, we would  
20 like to hear from you.

21 We did file a notice, Your Honor, at Docket Number  
22 1527 that includes details about the scam and the two known  
23 or confirms forms of email that these fraudsters appear to  
24 be using to target customers. We've been in very active  
25 dialogue with the Office of the United States Trustee, and

1 we appreciate their responsiveness. And they've also  
2 referred us to and put us in touch with the United States  
3 Attorney's Office for the Southern District, and we are  
4 collectively investigating and are in touch.

5 So to the extent there are additional developments  
6 on that front, Your Honor, we will let you know. But the  
7 important thing to get out, and we included this message  
8 within the notice that we filed, is, you know, all  
9 customers, we'd like them all to hear that neither the  
10 Debtors or their advisors will contact customers directly by  
11 phone, email, or otherwise and ask them to provide personal  
12 information or account information.

13 We may ask that people log into their app. That  
14 would be a secure method of communication, but we are not  
15 going to be asking you to verify or provide account details  
16 or personal information. And customers should be on notice  
17 that people are out there seeking that information, and it's  
18 illicit, and it's not coming from the Debtor. So I just  
19 wanted -- for whoever's been listening, Your Honor, I wanted  
20 to start with that.

21 THE COURT: I appreciate you putting that on the  
22 record, and we have a lot of people signed in today to hear,  
23 so...

24 MR. KWASTENIET: Great. Your Honor, turning to  
25 the first set of motions on the agenda, they relate to the



1 Debtor's key employee retention plan. There were three  
2 motions specifically, a motion to shorten notice, a motion  
3 to seal, and then an amended motion to approve the KERP.  
4 The amended motion was filed at Docket Number 1426, Your  
5 Honor, and it supplements and amends an original order filed  
6 back on October 11 of this year at Docket Number 1021.

7 Your Honor, I will note that as a gating matter,  
8 one of the objections, the Mr. Frishberg objection, as I  
9 read it, Your Honor, doesn't relate to the substance of the  
10 KERP so much as it does to the timing and the request to  
11 expedite. And as he made his appearance, he asked or  
12 suggested that maybe the Motion to Expedite be taken up  
13 first as a gating matter, which I'm happy to follow Your  
14 Honor's preference. I'm certainly happy to make a few  
15 remarks on the Motion to Expedite.

16 THE COURT: That's unnecessary because I invited  
17 an expedite hearing on the KERP. It was specifically at my  
18 urging that that was done. So the motion to shorten time,  
19 ECF 1429 is granted.

20 MR. KWASTENIET: Thank you, Your Honor.

21 THE COURT: So let me ask Ms. Cornell with respect  
22 to the ceiling motion, do you have an objection to the  
23 ceiling motion? The ceiling motion is Number 2 on the  
24 agenda. It's ECF 1425. There were no responses that were  
25 filed, but I just --

1 MS. CORNELL: Only insofar as the redactions  
2 pertained to our objection and the information on the  
3 evidentiary record.

4 THE COURT: I don't understand what you just said  
5 -- told me. Why don't you go up to the microphone if you  
6 would?

7 MS. CORNELL: Good morning, Your Honor. Shara  
8 Cornell on behalf of the Office of the United States  
9 Trustee. We filed our objection to the KERP ad filed at  
10 1426 and the motion to file under CLF 1425 in this case. I  
11 don't think I need to repeat what's in the objection, but  
12 insofar as the evidentiary basis provided by the Debtors  
13 today is insufficient because of those redactions. The  
14 United States Trustee objects to the motion to seal.

15 THE COURT: Okay.

16 MS. CORNELL: Thank you.

17 THE COURT: All right. The objection to the  
18 motion to seal is overruled. There were -- and so the  
19 motion to seal is granted.

20 MS. CORNELL: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. KWASTENIET: Thank you, Your Honor. I think  
23 that leaves us with two objections to the revised KERP  
24 motion. The U.S. Trustee's objection relates primarily to  
25 the adequacy of the record that we've made. And Your Honor,

1 one of the U.S. Trustee's objections, which was filed at  
2 Docket 1551, is that there is simply not enough information  
3 to tell what each participant does or what division of the  
4 company they are in.

5 And that may be true with respect to this -- the  
6 body of the motion itself, which speaks in some  
7 generalities. But there was an exhibit to the motion, Your  
8 Honor, that was specifically incorporated in the amended  
9 declaration of Mr. Ferraro that goes through on an employee-  
10 by-employee basis, what exactly their function is at the  
11 company, and what division of the company they work in.

12 And so, Your Honor, this might be a good time for  
13 me to move into evidence the two declarations that we have  
14 filed in support of the motion, and those are the  
15 supplemental declaration of Mr. Ferraro, who's in the  
16 courtroom today, which is filed at Docket Number 1427, and  
17 the supplemental declaration of Ms. Josephine Gartrell,  
18 who's from the Willis Towers Watson firm, which was filed at  
19 Docket Number 1428. She is on the line and available to the  
20 extent that anybody has cross-examination questions for  
21 either one of them.

22 THE COURT: All right. Let me ask are there any  
23 objections to the supplemental Ferraro declaration ECF 1427.  
24 Hearing no objection, it's admitted in evidence. Are there  
25 any objections to the Gartrell declaration ECF 1428?

1 Hearing none, it's admitted in evidence as well.

2 MR. KWASTENIET: Thank you very much, Your Honor.

3 So I'll continue walking through our response to the  
4 objections. The U.S. Trustee's first objection about not  
5 being able to tell what people do and what division we're in  
6 we think is wholly satisfied by the information provided in  
7 Exhibit B to the motion as incorporated into the Ferraro  
8 declaration. Ms. Cornell also says that she can't really  
9 tell if participants are insiders because we redact salary  
10 information. I would note, Your Honor, we do provide salary  
11 information albeit not the precise amount, but in a narrow  
12 --

13 THE COURT: Yeah, and I had urged that --

14 MR. KWASTENIET: Exactly that, yes.

15 THE COURT: -- ranges be included. I understood  
16 that the names, the exact salary information was in my view  
17 confidential commercial information, but to assure that the  
18 public record has sufficient information for people to  
19 consider, evaluate the revised KERP. I was satisfied if it  
20 provided salary information in ranges more description about  
21 what their job responsibilities are. That's been done. And  
22 so I'm satisfied with how that was done.

23 MR. KWASTENIET: Great. Thank you, Your Honor.

24 And in addition to providing the salary information and what  
25 departments people work in, the supplemental Ferraro

1 declaration also does provide further evidence that the  
2 proposed participants are not insiders. And specifically,  
3 Mr. Ferraro attests that none of the proposed KERP  
4 participants sits on or reports to the Debtor's board, was  
5 appointed by the board, exercises control over the Debtor's  
6 operations, directs overall policy, maintains substantial  
7 independent decision-making authority, or sets the terms of  
8 their own compensation.

9 Your Honor, we believe that those are the factors,  
10 relevant factors to determine when somebody as a functional  
11 matter, you know, has the qualities of an insider or not.  
12 And we would rest on the Ferraro declaration to address Ms.  
13 Cornell's objection. And Mr. Ubirna De Las Heras also  
14 raises a question about whether people are insiders. We  
15 think that the record very clearly establishes that the  
16 proposed KERP participants are not insiders.

17 THE COURT: All right. I will -- well, go on with  
18 your presentation and then I'm going to give Ms. Cornell an  
19 opportunity to argue her objections.

20 MR. KWASTENIET: Great. So that leaves us really  
21 with the objection for Mr. Ubirna De Las Heras. He raised  
22 several points about insiders and the like which I think  
23 I've already covered. But he also raised a question about,  
24 well, without knowing the exact names of the employees, how  
25 do we know if people may have taken cryptocurrency off the

1 Debtor's system. And in response to that, Your Honor, we  
2 thought that that was a fair point. In retrospect, maybe  
3 something that I wish I had thought of a few weeks ago.

4 But in any event, the Debtors are agreeing, and we  
5 will submit a revised form of order if Your Honor's inclined  
6 to grant the KERP motion in the next several days. That  
7 will exclude from the initial list of approved KERP  
8 participants any employee who transferred crypto off the  
9 system within the 90 days before filing, or who transferred  
10 crypto from another program into the custody program thereby  
11 arguably improving their position.

12 THE COURT: So as I understand it, this revised  
13 KERP is limited to 59 employees. Are any of those -- am I  
14 correct about the 59? That was --

15 MR. KWASTENIET: That is correct, Your Honor.

16 THE COURT: Are any being excluded, or you don't  
17 know yet?

18 MR. KWASTENIET: We're still looking into that,  
19 Your Honor, and we would propose to submit a revised form of  
20 order in the next few days once we've determined whether and  
21 who might need to be excluded based on our agreement that we  
22 won't give an initial KERP award. Now, I will say, Your  
23 Honor, for the benefit of employees, you know, who may have  
24 withdrawn some small amount of crypto three months ago,  
25 three months before the filing or something. It's our

1 intention to conduct an investigation. And if we determine  
2 in discussion with U.S. Trustee and the Creditors Committee  
3 that somebody's transaction history is not on the basis of  
4 inside information, we have a mechanism built into the KERP  
5 to propose adding people into it on notice with an  
6 opportunity to -- for a hearing if somebody objects.

7 And so I think it's entirely possible that we may  
8 exclude somebody initially because the raw data shows there  
9 was a transaction, but then we also plan to look into it and  
10 determine whether we think there was --

11 THE COURT: I think in fairness no inference will  
12 be drawn from the fact that you've excluded --

13 MR. KWASTENIET: Yes.

14 THE COURT: -- anybody in the first instance. And  
15 if you're able to work out -- assuming that I approve the  
16 KERP, assuming that there's no objection to putting them  
17 back in, that's an acceptable approach. But let's see where  
18 we get to.

19 MR. KWASTENIET: That's great. We appreciate  
20 that, Your Honor. And so that brings us just to the  
21 summation of the evidence in the declarations. First of  
22 all, the Gartrell declaration based on a study of comparable  
23 companies concludes that the KERP is reasonable and based on  
24 market comparables. The awards given to the participants on  
25 average range between the 25th and 50th percentile, so this

1 is certainly not an overly generous KERP in that regard.  
2 Mr. Ferraro also provides great evidence about the need to  
3 retain people and the significant attrition that's been  
4 facing the company.

5 THE COURT: What's the head count currently?

6 MR. KWASTENIET: The head count, I believe, Your  
7 Honor, the last I saw was approximately 170. Was it 160 --

8 MAN 2: 170 employees that have not tendered their  
9 resignation. Some take a while to get --

10 THE COURT: Why don't you just put that number on  
11 the record? I'm not (indiscernible) --

12 MR. KWASTENIET: Yes, Your Honor. The number is  
13 170 employees. There are a few who have tendered their  
14 resignation and are in the process of giving their sort of  
15 two weeks' notice who are still there, but there is a core  
16 group of 170. As we sit here today, 190 people may have  
17 shown up for work, but 20 of those are on their way out  
18 transitioning out. So it's -- we're down to a group of 170  
19 people, Your Honor, which is about 100 lower than when we  
20 first filed the KERP motion back in -- the initial KERP  
21 motion back in the beginning of October.

22 So we think that the record is very clear that we  
23 need to do this to retain people. We are getting really  
24 down to the nub of what we would need in order to continue  
25 to function, answer diligence requests, put together the go-



1 forward plan. Whether that's a sale or whether that's a  
2 standalone, we're working hard on both of those. We think  
3 that the KERP program -- at this point, we really are  
4 focused on getting people to stick around through the end of  
5 the reorganization. This is a one-year KERP program, so we  
6 think the KERP is designed well to match with our goal,  
7 which is to get key people to --

8 THE COURT: I think the goal is less than a year,  
9 but --

10 MR. KWASTENIET: It's less than a year and the  
11 comp is front-weighted. It's definitely less than a year,  
12 Your Honor. But based on that, we think that the record's  
13 clear that the KERP is needed and it's reasonable, and we'd  
14 ask Your Honor to approve the KERP motion.

15 THE COURT: All right. Ms. Cornell, do you want  
16 to be heard?

17 MS. CORNELL: Thank you again, Your Honor. Shara  
18 Cornell on behalf of the Office of United States Trustee. I  
19 know that Your Honor's already read our objection filed at  
20 Docket 1551. So if Your Honor has any questions for me,  
21 otherwise, we'll just rest on the papers today.

22 THE COURT: Thank you, Ms. Cornell.

23 MS. CORNELL: Thank you.

24 THE COURT: All right. Does anybody else wish to  
25 be heard in opposition to the amended motion for entry of

1 the -- of an order approving the KERP? All right. Not  
2 having -- hearing anyone, I'll go ahead and rule from the  
3 bench.

4 CLERK: Sorry, Judge. Someone's raising their  
5 hands.

6 THE COURT: Okay. I can't see that. So who is  
7 raising their hand?

8 CLERK: Mr. De Las Heras.

9 THE COURT: Okay. Go ahead.

10 MR. DE LAS HERAS: I am, Your Honor. May I be  
11 very brief today? Thank you. I assume it is --

12 THE COURT: That's fine.

13 MR. DE LAS HERAS: -- fine. An objection with  
14 Docket Number 1544. If Debtors are going to address my  
15 concern, there is nothing I can say, but I rest in what is  
16 in my objection Docket 1544. Thank you.

17 THE COURT: Okay. Thank you very much. Does  
18 anybody else wish to be heard? Deanna, I can't see if  
19 anybody's raising their hand, so I'll just depend on you to  
20 call them out.

21 CLERK: I see no additional raised hands, Judge.

22 THE COURT: All right. So what I'm going to do is  
23 read my ruling into the record. I would ask that the Debtor  
24 have a transcript of the ruling prepared so that -- what  
25 I've been -- tried to be very cautious about in this case is

1 when I rule, I've been trying to rule in written opinions.  
2 I want to be sure that there's no misunderstanding about  
3 what I have ruled. But here on this motion, I'll go ahead  
4 and just read my ruling into the record. A transcript can  
5 be prepared, and it will be on ECF -- on the ECF Docket. I  
6 suppose it'll be on the claims agent's docket as well and so  
7 that people can see precisely what I've ruled.

8 So first, let me deal with the general legal  
9 framework for approving KERPs. Section 363(b) of the  
10 Bankruptcy Code provides that a Debtor, after notice and a  
11 hearing, may use, sell, or lease other than in the ordinary  
12 course of business property of the estate. That's Section  
13 363(b)(1). To approve the use of estate property under  
14 Section 363(b)(1) of the Bankruptcy Code, a Debtor must show  
15 that the decision to use the property outside of the  
16 ordinary course of business was based on the Debtor's  
17 business judgment. See *In re Chateaugay Corp.*, 973 F.2d 141  
18 at 143 (2nd Cir. 1992) holding that a judge determining a  
19 Section 363(b) application must find a good business reason  
20 to grant such application.

21 Section 503 governs the allowance of  
22 administrative expenses "for actual necessary costs and  
23 expenses of preserving a Debtor's estate". That's Section  
24 503(b)(1)(A). The two general overriding policies of  
25 Section 503 of the Bankruptcy Code -- excuse me -- are to

1 preserve the value of the estate for the benefit of its  
2 Creditors and to prevent the unjust enrichment of insiders  
3 of the estate at the expense of its Creditors. See In re  
4 Journal Register Co., 407 B.R. 520 at page 535 (Bankr.  
5 S.D.N.Y. 2009). It cites the Second Circuit's McFarland's  
6 decision, which is at 789 F.2d 98 at page 101 (2d Cir.  
7 1960).

8 So with respect to payments to insiders, Section  
9 503(c)(1) prohibits the transfers to insiders unless certain  
10 strict requirements are met. A, the transferer obligation  
11 is essential to retention of the person because the  
12 individual has a bona fide job offer from another business  
13 at the same or greater rate of compensation; B, the services  
14 provided by the person are essential to the survival of the  
15 business; and C, either the amount of the transfer made to  
16 or obligation incurred for the benefit of the person is not  
17 greater than an amount equal to ten times the amount of the  
18 mean transfer or obligation of a similar kind given to non-  
19 management employees for any purpose during the calendar  
20 year in which the transfer's made or obligation is incurred.

21 Or if no such similar transfers were made to or  
22 obligations were incurred for the benefit of such non-  
23 management employees during such calendar year, the amount  
24 of the transfer or obligation is not greater than an amount  
25 equal to 25 percent of the amount of any similar transfer or

1 obligation made to or incurred for the benefit of such  
2 insider for any purpose during the calendar year before the  
3 year in which such transfer is made or obligation is  
4 incurred. That's Section 503(c)(1).

5 Section 101(31)(B) defines an insider in the  
6 context of a corporation as including a director of the  
7 corporation, officer of the corporation, person in control  
8 of the Debtor, partnership in which the Debtor is a general  
9 partner, general partner of the Debtor, or relative of a  
10 general partner, director, officer, or person in control of  
11 the Debtor.

12 With respect to payments to non-insiders, if an  
13 employee is not an insider, Section 503(c)(3) of the  
14 Bankruptcy Code permits payments to the Debtor's employees  
15 outside the ordinary course of business if such payments are  
16 justified by "the facts and circumstances of the case".  
17 Importantly, Section 503(c)(3)'s "facts and circumstances"  
18 justification test "creates a standard no different than the  
19 business judgment standard under Section 363(b) of the  
20 Bankruptcy Code." See *In re Velo Holding, Inc.*, 472 B.R.  
21 201 at page 209 (Bankr. S.D.N.Y. 2012). That's one of my  
22 opinions. See also *Borders Group*, 453 B.R. at pages 473 and  
23 74 evaluating the Debtor's KERF under a business judgment  
24 rule. That's also one of my opinions.

25 *In re Dana Corp.*, 358 B.R. 567 at 576 and 77

1 (Bankr. S.D.N.Y. 2006) describing six factors that courts  
2 may consider when determining whether the structure of a  
3 compensation proposal meets the "sound business judgment  
4 test" in accordance with Section 503(c)(3) of the Bankruptcy  
5 Code.

6 All right. I've already indicated I granted the  
7 motion to shorten time, and I granted the ceiling motion. I  
8 believe they're entirely appropriate in these circumstances.  
9 I invited the shortening of time, and the ceiling seems  
10 entirely appropriate consistent with comments I made  
11 earlier.

12 All right. So with respect to the KERP, whether  
13 the KERP participants are insiders, the question of whether  
14 participants are insiders is vital because it determines  
15 whether the Debtors will be required to meet the strict  
16 standards of Section 503(c)(1) or whether their KERP will be  
17 evaluated under the more lenient business judgment standard.  
18 Under Section 101(31) of the Bankruptcy Code where a Debtor  
19 is a corporation, insiders may include any "(i) director of  
20 the Debtor; (ii) officer of the Debtor; (iii) person in  
21 control of the Debtor; or (iv) relative of a director,  
22 officer, or person in control of the Debtor".

23 Courts have also considered -- I've also concluded  
24 that an employee may be an insider if such employee has at  
25 least a controlling interest in the Debtor or exercises

1 sufficient authority over the Debtor so as to unqualifiedly  
2 dictate corporate policy and the disposition of corporate  
3 assets. See *Velo Holdings*, 472 B.R. at 208. An  
4 individual's title by itself is insufficient to establish  
5 that an individual is a director or officer. See *In re*  
6 *Longview Aluminum, LLC*, 419 B.R. 351 at page 355 (Bankr.  
7 N.D. Ill. 2009). There are other cases that reach that same  
8 proposition. I won't burden the record further.

9 In *Public Access Technologies*, for example, the  
10 court found that an executive vice president was not an  
11 officer of the Debtor because there was no evidence such as  
12 affidavits, articles of incorporation, corporate minutes,  
13 resolutions, or any other document proving that the  
14 executive vice president was an officer under Section  
15 101(31)(b), 307 B.R. at 506.

16 Here I'm satisfied that the participants are not  
17 insiders. In their exhibits, the Debtors have provided  
18 detailed information about the participants' duties, salary,  
19 and position within the reporting structure. The Debtors  
20 have provided a declaration attesting that though some of  
21 the employees have titles such as "head", "director", "vice  
22 president", or "chief", none of the participants have  
23 discretionary control over substantial budgetary amounts or  
24 significant control with respect to the Debtor's corporate  
25 policies or governance. See the Ferraro declaration,

1 Paragraph 19.

2           Moreover, each of the participants' roles are  
3 limited in scope. None made company wide or strategic  
4 decisions, and none exercised sufficient authority over the  
5 Debtor as to unqualifiedly dictate corporate policy. See  
6 the motion in Paragraph 39. It cites In re Global Aviation,  
7 478 B.R. at 140 and 150. None of the participants were  
8 appointed by the board to sit on the board or directly  
9 report to the board. See In re LSC Communications, 631 B.R.  
10 818 at page 827 (S.D.N.Y. 2021) finding that the employees  
11 who were appointed by the board and would be deemed officers  
12 of the Delaware Corporate Law should "weigh heavily in  
13 concluding that the employees are officers for bankruptcy  
14 code purposes."

15           So whether the KERP should be approved, given that  
16 the participants are not insiders, the KERP should be  
17 evaluated under Section 503(c)(3) of the Bankruptcy Code to  
18 ensure that it is "justified by the facts and circumstances  
19 of the case." See In re Borders Group, 453 B.R. at page  
20 470. On balance, in described in more detail below with the  
21 details of the unredacted information, I am satisfied the  
22 Debtors have met their burden of showing that the KERP is  
23 justified in a reasonable exercise of their business  
24 judgment. So then with respect to whether this KERP is  
25 justified by the facts and circumstances of the case,



1 although the Court should be satisfied that the KERP  
2 employees are not insiders under Section 101(31), the KERP  
3 must still be analyzed under Section 503(c)(3) because it is  
4 not an ordinary course transaction. See *In re Nellson*  
5 *Nutraceutical, Inc.*, 369 B.R. 787 at pages 803 and 804  
6 (Bankr. D. Del. 2007).

7 In the context of approving compensation programs,  
8 courts in the Second Circuit have considered the factors  
9 identified in *In re Dana Corp.*, which I cited earlier, when  
10 determining if a compensation proposal and the process for  
11 developing it meet the sound business judgment test. Those  
12 issues are, A, is there a reasonable relationship between  
13 the plan proposed and the results to be obtained? I.e.,  
14 will the key employees stay for as long as it takes for the  
15 Debtor to reorganize or market its assets?

16 B, is the cost of the plan reasonable in the  
17 context of the Debtor's assets, liabilities, and earning  
18 potential? C, is the scope of the plan fair and reasonable?  
19 Does it apply to all employees? Or if not, does it  
20 discriminate unfairly? And D, is the plan or proposal  
21 consistent with industry standards? E, what were the due  
22 diligence efforts of the Debtor in investigating the need  
23 for a plan analyzing which key employees need to be  
24 incentivized? What is available? And what is generally  
25 applicable in a particular industry? And F, did the Debtor

1 receive independent counsel in performing due diligence and  
2 in creating and authorizing the incentive compensation. See  
3 In re Dana Corp., 358 B.R. at pages 576 and 77.

4 So the relationship between this plan, the plan  
5 proposed, and the results obtained. The reasonable  
6 relationship exists between the plans proposed and the  
7 results to be obtained. See 358 B.R. at 566 and 57. The  
8 Debtors have noted that the goal of their KERP is to have  
9 appropriate staff on hand to facilitate a reorganization of  
10 sale. See the motion at Paragraph 29. The proposed KERP is  
11 narrowly tailored to that goal. The Debtors have chosen 59  
12 out of 167 employees at the time of this writing -- the time  
13 of the writing of the motion, who the Debtors believe have  
14 "institutional and technical knowledge crucial to the  
15 Debtor's ability to maximize value." See the Ferraro  
16 declaration at Paragraph 15.

17 Further, the payments are paid in increments and  
18 are tied to the participants remaining at the Debtors for a  
19 year, which is aligned the Debtor's goal of keeping the  
20 participants on staff through the restructuring and sale  
21 process. See the motion at Paragraph 29. The Debtors have  
22 also tailored the payment amounts so that the employees that  
23 are more critical and more difficult to replace get higher  
24 bonuses. See the motion at Paragraph 19. There is already  
25 evidence that the employees are strained by the Chapter 11

1 responsibilities. As the examiner noted in her report that  
2 there were delays in the Debtor's production of documents  
3 due to the "reduction in Celsius' workforce.". See ECF  
4 Docket Number 1411 at page 11.

5 Accordingly, it is evident to the Court that given  
6 the pace of attrition here, the Debtors could continue to  
7 lose staff at an unsustainable rate if employees are not  
8 incentivized to stay. I would note I've had other cases  
9 where, as a result of attrition, the Debtors have wound up  
10 having to hire more expensive consultants than the employees  
11 who are filling those tasks now.

12 All right. Next, the cost of the proposed plans.  
13 The cost of the proposed KERP is reasonable in light of the  
14 Debtor's financial situation. The cost of the KERP bonuses  
15 is approximately \$2.84 million. According to the analysis  
16 performed by Gartrell, which compares the Debtor's KERP to  
17 26 similarly sized companies, the cost per participant is  
18 positioned between the 25th percentile and median of the  
19 market. The total cost of the program, approximately 2.84  
20 million, is on the higher end between the 75th and 90th  
21 percentiles, but the cost as a percentage of assets is on  
22 the low end below the 25th percentile.

23 On balance, Gartrell attests that the KERP are  
24 "reasonable and appropriate in light of competitive  
25 practice." Given that on average the various program

1 metrics fall around the median of the market, I agree with  
2 respect to unfair discrimination. The Debtors have also  
3 shown that the proposed KERP does not discriminate unfairly.  
4 See In re Eaglepicher Holdings, Inc., 2005 W.L. 4030132 at  
5 star 4 (Bankr. S.D. Ohio Aug. 26, 2005). In that case, in  
6 Eaglepicher, the court found that the Debtor's proposed  
7 retention plan did not unfairly discriminate against its  
8 employees. There the plan only covered "a small minority of  
9 employees". However, it was broad enough so that it did not  
10 include only senior management.

11 The Court observed that a small group of employees  
12 could benefit from the retention plan to the exclusion of  
13 others because not every employee is similarly situated in  
14 terms of their employment to the reorganization process.  
15 Here the Debtors have carefully selected a small pool of  
16 employees that are critical in the restructuring process.  
17 "The participants are critical to the continued maintenance  
18 of customer accounts and that a platform more generally by  
19 among other things performing essential security functions  
20 and building enhanced features and functionality for the  
21 Debtor's system and assets." See the supplemental Ferraro  
22 declaration at Paragraph 19.

23 The Debtors have also attested and shown evidence  
24 that these employees have been forced to shoulder additional  
25 burdens related to the Chapter 11 such that they are

1 deserving of bonuses. Finally, there is also no evidence in  
2 the record that the Debtors have unfairly excluded  
3 employees.

4 And then with respect to comportment with industry  
5 standards, the proposed KERP comports with industry  
6 standards as discussed above. The Debtors have submitted a  
7 declaration from a compensation expert that indicates that  
8 the terms, cost, and structure of the KERP comport and  
9 structure -- comport with the structure of the industry.

10 The propriety of the diligence. The Debtors have  
11 exercised proper due diligence in formulating the proposed  
12 KERP. In In re Brooklyn Hospital Center, 341 B.R. 405 at  
13 page 412 (Bankr. E.D.N.Y. 2006), the court found that due  
14 care was exhibited by the Debtor in the formulation of a  
15 KERP because, among other things, "the board consulted with  
16 its counsel and financial advisors, formulated several  
17 proposals, reduced the amount to be paid pursuant to the  
18 KERP, and after negotiations with the committee, broadened  
19 the scope of employees."

20 Here the Debtors engaged and retained WTW to  
21 provide independent compensation advice, and the Debtor's  
22 special committee undertook a deliberative process convening  
23 with the Debtor's various advisors. See the Ferraro  
24 declaration at Paragraph 17. The Debtors also conferred  
25 with the U.S. Trustee on November 2, 2022 and based on the

1 results of the conversation, the Debtors revised the KERP  
2 participant list. And see the amended motion in Paragraph  
3 5. Accordingly, I am satisfied that the Debtors have  
4 undertaken sufficient diligence.

5 And then with respect to adequacy of counsel, in  
6 the last -- lastly, the Debtors' counsel from a highly  
7 competent and experienced independent compensation  
8 consultant, their counsel and their highly experienced  
9 independent consultation with WTW, see our trial declaration  
10 at Paragraph 7, together with the input that the Debtors  
11 received from other advisors, I'm satisfied that the Debtors  
12 received sufficient counsel.

13 For all of those foregoing reasons, the Court  
14 grants the amended KERP motion. I understand before an  
15 order will be entered you'll go back and review the  
16 participant list to satisfy that, at least initially,  
17 looking at it that none had withdrawn substantial funds in  
18 the 90 days before. They can still be included in that  
19 subsequently if that's appropriately.

20 MR. KWASTENIET: That's right, Your Honor. And we  
21 expect that'll take a few days --

22 THE COURT: That's fine.

23 MR. KWASTENIET: -- to sort out that analysis.  
24 And then once we've concluded that, we'll present the  
25 revised form of order to the U.S. Trustee and the committee

1 and submit to chambers, Your Honor.

2 THE COURT: All right. Thank you very much.

3 MR. KWASTENIET: Thank you very much.

4 THE COURT: All right. Hopefully the transcript  
5 will be readable. It saved me from having to do one more --  
6 still one more opinion. Okay.

7 MR. NASH: Good afternoon -- pardon me. Good  
8 afternoon, Your Honor.

9 THE COURT: You get to speak again, Mr. Nash.

10 MR. NASH: I do. Good afternoon, Your Honor. Pat  
11 Nash for the Debtors. Next on the agenda is the Debtor's  
12 motion to -- for entry of an order extending the Debtor's  
13 exclusive periods to file a Chapter 11 plan and solicit  
14 acceptances of that plan.

15 THE COURT: All right. Just give me a second to  
16 find my relevant notes for that.

17 MR. NASH: And that's Docket Number 1317, Your  
18 Honor.

19 THE COURT: Yes.

20 MR. NASH: Also relevant, Your Honor, we have  
21 filed a revised form of order at Docket Number 1588. That  
22 reflects resolution or avoidance, I will say, of resolution  
23 with the UCC, avoidance of an objection from the UCC. The  
24 UCC did file a statement in connection with the extension of  
25 the exclusive periods. That's found at Docket Number 1536.

1 Your Honor, we had four timely filed objections to the  
2 motion. Two of those have been resolved.

3 There was an objection, limited objection from  
4 certain Celsius borrowers, customers who were part of the  
5 borrower program at Docket Number 1475. It's my  
6 understanding that that objection is resolved by the changes  
7 to the order and the shortened exclusive periods as compared  
8 to the time we sought when we filed the motion. We've also,  
9 Your Honor, for similar reasons and a similar basis  
10 withdrawn -- resolved, pardon me, the objection of the ad  
11 hoc group of withhold account holders, which is found at  
12 Docket Number 1494.

13 We have been unable to resolve or the changes that  
14 we've made to the order, Your Honor, I'm -- it was my  
15 understanding do not resolve the objection of Mr. De Las  
16 Heras, which is found at Docket Number 1476. And similarly,  
17 it is our understanding that the objection of Irena Ducan at  
18 Docket Number 1477 remains unresolved.

19 Last thing I'll note from a procedural point of  
20 view, Your Honor, at Docket Number 1553, Mr. Immanuel  
21 Herrmann filed on behalf of himself and apparently 375 other  
22 Celsius earned customers, and maybe customers of other  
23 programs -- it's not clear to me -- filed a joinder to the  
24 objection that was filed by the borrower customers, which we  
25 have resolved. So with that, Your Honor, I'll talk a little



1 bit about, you know, what we've accomplished, where we're  
2 going, and the back and forth a little bit that led to us  
3 agreeing to the shortened period.

4 So Your Honor, when we filed the motion, we sought  
5 an extension of our exclusive period to file a plan through  
6 the end of March. We met with a lot of pushback from  
7 represented and unrepresented -- represented Creditors,  
8 unrepresented Creditors, the official committee, the ad hoc  
9 committee that the amount of time that we sought was too  
10 long, wanted us to be, you know, on a shorter leash. In  
11 many respects, Your Honor, those Creditors were pushing  
12 through an open door. It is definitely time, and this week  
13 is a big part of that. It is time to be moving these cases  
14 forward.

15 In consultation with the UCC, what we've agreed  
16 and what you see in the revised order is an extension of the  
17 Debtor's exclusive periods not only to file, but also to  
18 solicit a plan through February 15th. We've also --

19 THE COURT: And how are you going to accomplish  
20 that?

21 MR. NASH: Well, we're going to -- in all  
22 likelihood, Your Honor, at a minimum be seeking an extension  
23 of the solicitation period in advance of February 15th.  
24 That will be easier to do and easier for people to digest to  
25 the extent that we have a plan on file.

1 THE COURT: Well, to the extent you have a plan on  
2 file, I think that would probably go a long way to at least,  
3 you know, easing at least some of the concerns and  
4 objections that have been expressed.

5 MR. NASH: Understood, Your Honor, and one of the  
6 reasons why -- we understand those concerns. We understand  
7 that perspective, and it's why, as I said, I believe that  
8 the UCC and others were pushing through an open door, at  
9 least as it came to shortening the requested extension of  
10 the exclusive periods.

11 A lot of -- so, Your Honor, big picture. We're in  
12 the midst of a marketing process. We have -- of course the  
13 GK8 sale will be in front of Your Honor later this week. We  
14 are in the midst of a marketing process with respect to the  
15 remainder of the Debtor's assets. The initial bid deadline  
16 was two or so weeks ago, maybe three weeks ago now. We have  
17 final bid deadline of December 12th. That marketing process  
18 is being done in close coordination with the UCC as is  
19 everything that we do in these cases.

20 We are also on a parallel path working very hard  
21 with the UCC on a potential standalone reorganization. And  
22 Mr. Ferraro and the individual members of the committee, in  
23 particular the two co-chairs, they speak regularly. There  
24 is a lot of work that is, you know, under -- being  
25 undertaken in that regard. And as you saw from the UCC's

1 limited objection or statement, however you want to  
2 characterize it, we agree with them. I mean, it is time to  
3 be moving these cases forward.

4 The level of frustration in the community is  
5 palpable. And the only way that we're going to get past it  
6 -- I don't know that we'll ever get past it, but the only  
7 way that we'll deal with it is if we start moving these  
8 cases forward in a concrete fashion, and that is what we  
9 intend to do. You know, you hear a lot, Your Honor, from  
10 certain pro se Creditors and from the regulators that, you  
11 know, we don't speak with them enough. There's a limit to  
12 the number of people that we can speak with.

13 And as it relates to the regulators, Your Honor, a  
14 reorganized standalone Celsius is going to have to be  
15 regulatory compliant. We are working with the UCC to  
16 understand what it is we think we can and can't do in order  
17 to be regulatory compliant. We don't have anything to talk  
18 to the regulators about yet. But when we do, we will. And  
19 so unless Your Honor has any questions for me, I think Mr.  
20 Pesce or one of the White and Case lawyers may want to  
21 address Your Honor. But otherwise, we think that this, you  
22 know, relatively limited (indiscernible) a bit necessary.  
23 To say it would be a free-for-all if we lost exclusivity is  
24 probably the understatement of the century, Judge. So  
25 unless you have any questions, Your Honor, I'll --

1 THE COURT: Let me hear from Mr. Pesce.

2 MR. NASH: Thank you, sir.

3 MR. PESCE: Thank you, Your Honor. For the  
4 record, Gregory Pesce, White and Case on behalf of the  
5 Creditors committee. If you'll indulge me for just, you  
6 know, two or three minutes, I wanted to provide some context  
7 and to amplify some of the things we put in our statement.  
8 But as I've seen during the course of this hearing, there's  
9 a lot of community -- a lot of the community watching today,  
10 so I just want to make a few points very crystal clear.

11 So since the outset of this case, the committee  
12 has sought to maximize value. In other words, we've tried  
13 to make the pie bigger. At the same time, we've also been  
14 focused on max -- in addition to maximizing value,  
15 equalizing treatment among Creditors. It's very problematic  
16 for a variety of reasons to think that one Celsius user will  
17 get a higher recovery based on very attenuated, perhaps  
18 unknowable circumstances of how they put coins on --

19 THE COURT: They'll just have a different  
20 extremely vocal group if that were to happen.

21 MR. PESCE: Correct. It would -- you know, it's  
22 something we thought about at the beginning of the case is  
23 the possibility of splintering many, many committees and  
24 many different people here eating up value, delaying time.  
25 So we've really focused on how to equalize treatment to the

1 extent possible among Creditors. As you've heard today,  
2 that's very challenging for two big reasons. One is -- and  
3 the committee shares this goal. Our members are very  
4 committed to providing some kind of in-kind recovery in some  
5 type of crypto to the constituents to the greatest extent  
6 possible.

7 The second big challenge is we have a fundamental  
8 math problem. There's about \$5.5 billion of customer  
9 obligations. There are, you know, two billion and change of  
10 coins. So depending on the trading price of coins, which  
11 varies daily and is very volatile right now, you're looking  
12 at something like a 50 percent hole on some days for the  
13 Creditors. So from the outset --

14 THE COURT: And you haven't included mining.

15 MR. PESCE: Well, yeah, and that's what I'm going  
16 to get to. So from the outset -- and this is what  
17 distinguishes this case perhaps from Voyager, which is also  
18 in the Southern District before Judge Wiles, we've tried to  
19 figure out a way to supplement the coin recovery. And here  
20 we have a couple of pockets of value that might make that  
21 possible. As was mentioned, there's the GK8 asset. The  
22 committee worked closely with the Debtors on that process.  
23 It was a tough call, but at the end of the day we determined  
24 that there was very little, perhaps any value to that  
25 business without the founders being on board with the sale.

1           The founders were adamant that they wanted out of  
2 Celsius. So we had to decide for GK8 do we let the value go  
3 potentially to zero, or do we take the bird in the hand  
4 today. There'll be more about that later in the week with  
5 the other filings the Debtor will be making I'm sure.  
6 Second, we have the mining business, something that none of  
7 these other crypto exchange bankruptcies have. The value of  
8 that business could be significant, but we also need to take  
9 our time looking at it. It has a counterparty as you've  
10 heard, Core, which has its own challenges. There's lots of  
11 other internal things going on.

12           And then finally, the third pocket of value is the  
13 litigation recovery that we expect will be a significant  
14 portion of what Creditors get here. So with that said,  
15 going into the exclusivity objection, and we literally  
16 received thousands of emails, calls, text messages, tweets,  
17 Reddit messages, we seriously considered seeking to  
18 terminate exclusivity. But that begged the question of to  
19 what end. As Your Honor knows, we've had some differences  
20 of opinion with the examiner.

21           That said, we supported the appointment of the  
22 examiner and the work that she is doing with her team. That  
23 report, though, which is not due until January 17th, that  
24 report is going to cost a lot of money. It's taking up a  
25 lot of time of the committee and the people at the company.

1 We would like to understand at least some of what is in that  
2 report before moving forward.

3 Second, as Mr. Nash noted, the bids, we've  
4 received indicative bids, but the final bids aren't due  
5 until December the 12th. And then finally, GK8, you know,  
6 depending on how long that process takes in Israel, could  
7 take something like 30 to 60 days to close. So with all  
8 that said, you know, at the same --

9 THE COURT: What's the range of recovery from GK8?

10 MR. PESCE: You know, the headline price is \$44  
11 million. There's a couple of setoffs for taxes and some  
12 other things, but I think it's in the high 30s. We'll have  
13 to check with the Debtors. You know, but all that being  
14 said, the extension that was sought was too long. We  
15 thought we challenged liquidity too much, and we worked to  
16 keep the Debtors' feet to the fire.

17 I want to just highlight a few aspects of this  
18 deal, which might be very apparent to the bankruptcy nerds  
19 in the room but might not be to some folks listening in at  
20 home. So there's a hearing on February the 15th. That's an  
21 omnibus hearing. Our deal is that that's when exclusivity  
22 ends. We would expect that if the Debtor seeks a further  
23 extension, for whatever reason that might be, it'll be heard  
24 at that hearing. Second, there -- the local bridge order,  
25 which permits an extension of a deadline as long as --

1 THE COURT: That's done away with the filing.

2 MR. PESCE: It will be done away with, and then  
3 finally, on the solicitation, they can't just file a plan  
4 the day before and keep the benefit of that. So what are we  
5 going to do during this period before Valentine's Day? As  
6 Mr. Nash noted, we're looking at the new co-concept. Our  
7 co-chairs speak regularly with Mr. Ferraro. We're trying to  
8 see if that is -- that works from a regulatory perspective  
9 and if it can get customers to trust it.

10 Second, we insisted on a bidding process. That  
11 process is going on. We've received several promising bids,  
12 and we're working very closely with those bidders. We've  
13 had in-person and Zoom meetings with several bidders,  
14 including members of our committee. Those -- the bids that  
15 we have gotten to-date are all very interesting to us and we  
16 think have significant promise. But candidly, the bids are  
17 not ready for prime time just yet. They have financing  
18 needs. They will need to have a conversation with Ms.  
19 Milligan and other regulators. And that said, though, we  
20 expect that those issues will be resolved quickly.

21 Finally, at the same time, the committee is  
22 unwilling to put all its eggs in the basket of either the  
23 new co or these bidders coming forward. So at the same time  
24 as all of those are happening, we're working on our own  
25 fallback plan that we will be ready to file ahead of



1 Valentine's Day if these other options need more time to  
2 work out or if they are not feasible. So that one way or  
3 the other, we can ensure the account holders get the value  
4 of the mining business, get the value of GK8, get the  
5 valuation of the litigation trust we expect will be set up,  
6 and the crypto value one way or the other.

7 Just one final -- two final points before I close,  
8 Your Honor. I note that today's proceedings in particular  
9 have been very challenging for many of the account holders  
10 to listen to and to understand the perspective of the  
11 committee. We are deep -- we work for the customers first  
12 and foremost. We are their fiduciary. We take that very  
13 seriously. In particular, we've spent -- we were tallying  
14 it up this morning, White and Case alone has spent something  
15 like over 1,000 hours speaking to customers, including many  
16 of the people who spoke today. We're going to continue to  
17 do that, and everyone -- we're on Twitter. They have our  
18 emails. We have a website. If people want to speak to us  
19 and share their perspectives, we're more than willing to  
20 hear it.

21 And second, on the regulators, it is true we have  
22 not presented a proposal to the regulators yet. That said,  
23 that -- we view that as a necessary part of this. We  
24 negotiated for special information and participation rights  
25 in the bidding procedures. We expect those will get made to

1 you soon.

2 So, in closing, this was a difficult choice for  
3 the committee. We do think that the process will have  
4 benefited by having an exclusivity extension, but we really  
5 view this as presumably the only one that we would support.  
6 Based on what we see now, we need to work hard. We're going  
7 to work hard with all the constituents, including the  
8 Debtor, to get it done. So I appreciate Your Honor giving  
9 me the luxury to explain and amplify some of these points  
10 today.

11 THE COURT: Thank you, Mr. Pesce. Ms. Cornell or  
12 Mr. (Indiscernible)?

13 MS. CORNELL: Good afternoon again, Your Honor.  
14 Shara Cornell on behalf of the Office of the United States  
15 Trustee. The United States Trustee communicated informally  
16 with the Debtors regarding their request to extent  
17 exclusivity. I can report that the Debtors took our  
18 requests seriously and implemented them into the proposed  
19 order. And we are in agreement on the extension requested  
20 today. Thank you.

21 THE COURT: All right. Does anybody else wish to  
22 be heard? Ms. Kovsky, you're on the screen. Do you want to  
23 be heard?

24 MS. KOVSKY: Thank you, Your Honor. We had filed  
25 a limited objection seeking to terminate the Debtor's

1 exclusivity after January 31st if they didn't get a plan on  
2 file. We're comfortable given the logistics as explained by  
3 Mr. Pesce that this proposed order effectively does the same  
4 thing that we are requesting that the Debtors want to have  
5 an extension of exclusivity to solicit their fund. They've  
6 really got to get it on file more or less by January 31st,  
7 hopefully even sooner.

8 Our preference would have been to actually put in  
9 something now to modify exclusivity to allow the committee  
10 to file something promptly after that if the Debtors don't  
11 get a plan on file timely. But since the committee is  
12 comfortable with this proposed plan, the withhold group will  
13 live with it as well.

14 THE COURT: Thank you, Ms. Kovsky. Anybody else  
15 wish to be heard?

16 MR. ADLER: Your Honor, can you hear me? This is  
17 David Adler.

18 THE COURT: Yes, I can hear you, Mr. Adler.

19 MR. ADLER: Good afternoon, Your Honor. David  
20 Adler from McCarter and English on behalf of certain  
21 borrowers, now the ad hoc group of borrowers, which was  
22 filed earlier today. We filed a limited objection, Your  
23 Honor, with respect to the time that was sought by the  
24 Debtors of 141 days. We thought 60 days was more  
25 appropriate. After discussions with Kirkland, we agreed

1 with the schedule that they proposed.

2 We did also raise issues, concerns that we have in  
3 this case regarding lack of communication, and it goes to  
4 the -- some very important issues in this case, Your Honor,  
5 with respect to the bidding process. If a bidder is coming  
6 in and wanting to buy assets, the bidder has to obviously  
7 place a value on those assets. And having discussions with  
8 the constituents might assist the bidder in coming up with a  
9 value, particularly with respect to the borrowers who have  
10 certain rights under 363(o).

11 So I've spoken with Kirkland about that issue in  
12 particular, and we're trying to work it out. I'm optimistic  
13 that we will work it out. And based on that, Your Honor, I  
14 am -- the time period proposed in the revised proposed form  
15 of order is acceptable to me.

16 THE COURT: Thank you, Mr. Adler. Does anybody  
17 else wish to be heard?

18 MR. HERRMANN: Yes, this is Immanuel Herrmann, pro  
19 se Creditor. So I in my personal capacity, along with 374  
20 other pro ses in their personal capacity --

21 THE COURT: Wait, wait, wait. You can speak for  
22 yourself. You can't speak for 374 other people.

23 MR. HERRMANN: I -- absolutely, Your Honor. I  
24 wanted to make clear, actually, at the beginning that I'm  
25 only speaking for myself. So, I agree with the filing that

1 David Adler made. I'm in -- I also agree that there needs  
2 to be more communication with (Indiscernible) as well. And  
3 I have spoken with the Debtor about this as well, and I'm  
4 optimistic that we can make progress. There's a lot of  
5 creative ideas for maximizing value, and it's a pretty  
6 broadly held belief as far as I have seen that we can  
7 maximize value by making sure that bidders are in  
8 communication with Creditors and that they'll actually go  
9 along with a plan.

10 And it's the same with any kind of standalone  
11 reorganization plan as well. So I did support this  
12 compromise proposal as the joinder shows. And you know,  
13 this meets those concerns. And that said, I think there  
14 needs to be a lot more open communication with customers in  
15 the next 60 days.

16 THE COURT: Thank you very much, Mr. Herrmann.  
17 Anybody else wish to be heard? Not hearing anyone else, Mr.  
18 Nash?

19 MR. NASH: Nothing more from me, Judge, unless you  
20 have any questions.

21 THE COURT: All right. I'm going to do what I did  
22 with the KERP. I'm going to rule from the bench. I would  
23 ask again that a transcript be prepared so there's no  
24 misunderstandings about what the Court's ruling is.

25 First, the legal standard. Under Section 1121(b)

1 of the Bankruptcy Code, a debtor has the exclusive right to  
2 propose a Chapter 11 plan during the first 120 days after an  
3 order granting relief. Section 1121(c)(3) extends the  
4 period of exclusivity for an additional 60 days to a maximum  
5 of 180 days where the Debtor has filed a Chapter 11 plan and  
6 is soliciting votes on such plan. Of course, that hasn't  
7 happened at this point.

8 The point of exclusivity is to promote an  
9 environment in which the Debtor's business may be  
10 rehabilitated and a consensual plan may be negotiated. See  
11 In re Burns and Roe Enterprises, Inc., 2005 W.L. 6289213 at  
12 star 4 (D.N.J. Nov. 2, 2005). Section 1121(d)(1) permits a  
13 court to extend a Debtor's exclusivity for cause.  
14 Specifically, 1121(d) provides that "on request of a party  
15 in interest and after notice and a hearing, the court may  
16 for cause reduce or increase 120-day period or the 100-day  
17 period referred to in this section." However, the 120-day  
18 period --

19 MAN: Can you guys hear?

20 THE COURT: Please don't interrupt. Do not  
21 interrupt.

22 However, the 120-day period cannot be extended  
23 beyond 18 months after the order for relief date and the  
24 180-day period cannot be extended beyond 20 months after the  
25 order for relief date. That's 1121(d)(2)(A) and (B). The

1 determination of cause under Section 1121(d) is a fact-  
2 specific inquiry, and the Court has broad discretion in  
3 extending or terminating exclusivity. See In re Adelphia  
4 Communications Corp., 352 B.R. 578 at 586 (Bankr. S.D.N.Y.  
5 2006) .

6 A quote from that case, "A decision to extend or  
7 terminate exclusivity for cause is within the discretion of  
8 the bankruptcy court and is fact-specific." See also In re  
9 Lehigh Valley Professional Sports Club, Inc., 2000 W.L.  
10 290187 at star 2 (Bankr. E.D. Pa., March 14, 2000). Relief  
11 under Section 1121(d) is committed to the sound discretion  
12 of the bankruptcy judge. There are other cases. It's a  
13 long line of authority.

14 The Court's examined a number of factors to  
15 determine whether there is cause for extension of  
16 exclusivity periods. See In re Borders Group, Inc., 460  
17 B.R. 818 at 822 (Bankr. S.D.N.Y. 2011). Again, there are  
18 lots of other cases that do that. The factors include, A,  
19 the size and complexity of the case; B, the necessity of  
20 sufficient time to negotiate a plan of reorganization and  
21 prepare adequate information to allow a Creditor to  
22 determine whether to accept such plan; C, the existence of  
23 good faith progress toward reorganization; D, whether the  
24 Debtor is paying his debts as they become due; E, whether  
25 the Debtor has demonstrated reasonable prospects for filing

1 a viable plan; F, whether the Debtor has made progress  
2 negotiating with Creditors; G, the amount of time which has  
3 elapsed in the case; H, whether the Debtor is seeking an  
4 extension to pressure Creditors; and I, whether an  
5 unresolved contingency exists.

6 Not every factor is relevant to each case, and  
7 factors themselves might not be determinate overall. See  
8 Adelphia Communications, 336 B.R. at 590. Rather, the key  
9 inquiry is whether extending or terminating exclusivity  
10 would move the case forward materially. So that's the legal  
11 standard. Then my analysis.

12 I agree with the comment that lifting exclusivity  
13 now would lead to a freefall. I mean, it would just be  
14 totally chaotic. I think this is a case where the Debtors  
15 and the committee and its professionals have cooperated  
16 extensively. An examiner was appointed. I think that was  
17 important in this case. It obviously is expensive and time-  
18 consuming, but certainly the examiner really delivered in  
19 terms of the interim report, and it's been very helpful to  
20 the Court.

21 There are a lot of moving parts in this case.  
22 Whether there's been substantial progress is hard for me to  
23 see. I hear what counsels say, and for now, at least, I'll  
24 certainly take them at their word. There was agreement  
25 between the committee and the Debtor early on to pursue dual



1 tracks with the standalone reorganization plan and a  
2 possible 363 sale. Bidding procedures have already been  
3 approved on that. We have a hearing later this week on the  
4 sale of the GK8 assets.

5 The Debtors, from all appearances to me and what  
6 the examiner said, the Debtors have worked collaboratively  
7 with the examiner. As the staffing and the Debtor has  
8 declined, it's made it that much harder to produce  
9 information and documents that not only the examiner, but  
10 the committee and others have wanted to see. The hearings  
11 this week, while I know that some Creditors and some  
12 regulators wanted to push off a decision from day one, it's  
13 been clear to the Court that these are gating issues and  
14 that need to be decided if possible for progress really to  
15 be made.

16 There's been briefing on those. We had the  
17 hearing earlier this morning on ownership of the  
18 (indiscernible) assets, the sale of stable coin. The  
19 objections raise reasonable frustrations of the pro se  
20 Creditors and others about the pace of the case. And I'm  
21 mindful of all that, but really none of them have cited any  
22 legal authority that a failure to file a plan within four  
23 months constitutes a lack of substantial progress. I have  
24 to say in any of the larger cases I've had, I haven't had --  
25 other than pre-packs, I don't think I've had really, you

1 know, plans proposed within that timeframe. And here  
2 there's been a commitment to move forward with it.

3 You know, the fact that the Debtors in Voyager are  
4 also represented by Kirkland and filed the plan on the  
5 petition date, they had a pre-pack and things haven't turned  
6 out quite the way they expected it would either. The  
7 industry as a whole is in turmoil. I think the  
8 professionals are doing a commendable job in keeping this  
9 case from being a total freefall and keeping this case  
10 moving forward.

11 I'm certainly very mindful of the concerns  
12 expressed by the regulators, Ms. Milligan this morning, Ms.  
13 (Indiscernible). I share those concerns. It's clear -- and  
14 the U.S. Trustee. Ms. Cornell, I didn't mean to leave you  
15 out of that. Okay. I mean, it's clear to me whether it's a  
16 standalone or a 363 sale, any ongoing enterprise is going to  
17 have to satisfy regulatory requirements. And I think that's  
18 clear to everybody in this room. You know, one additional  
19 regulation of congress, if they settle on any, is going to  
20 adopt. I mean, there's going to be something. I mean,  
21 there's just -- the market's in complete turmoil.

22 So it's going to be difficult. I don't  
23 underestimate that. I am fully committed to see this case  
24 move forward as quickly as it possibly can. The costs are  
25 enormous. I haven't had fee applications yet, but they are

1 going to be extremely substantial. But I don't see the  
2 alternative to it. The number of objections that have been  
3 raised, serious objections by pro se Creditors, which I  
4 think I commend the Debtors have responded to. Pro se  
5 Creditors may not always appreciate the response they get,  
6 but they've responded to.

7 I've been reading these pro se objections and  
8 comments that have come up all along the way. And I -- you  
9 know, I'm very moved by the problems that the collapse of  
10 Celsius has presented in the marketplace to pro se  
11 Creditors, Creditors represented large and small. So I  
12 agree with the Debtors that extending the exclusivity  
13 periods will benefit the Debtor's estates, their Creditors  
14 and all other key parties in interest, especially when, as  
15 here, all stakeholders are working toward a consensual  
16 volume-maximizing restructuring.

17 Being required to dual-track negotiations across  
18 multiple plans could give rise to destructive uncertainty  
19 if, you know, exclusivity were ended. It would give rise to  
20 destructive uncertainty to the detriment of all  
21 stakeholders. I could cause substantial disruptions to the  
22 regulatory approval process. Though it's possible that  
23 additional extensions of the exclusivity period could  
24 prejudice Creditors if there is not substantial progress  
25 made at this juncture, the Creditors will benefit from the

1 Debtors being able to continue negotiations regarding  
2 restructuring transactions.

3 Again, the objectors' frustrations, they're  
4 reasonable given the amount of professional fees being  
5 expended on this case. But at this juncture of the case,  
6 the Debtors need more time to hammer out the details of a  
7 plan or a potential sale. With the new dates that have been  
8 negotiated with the committee and largely accepted I'm told  
9 today by many of the different constituencies, I think this  
10 is clearly a motion that should and is being granted.

11 You know, today we had ownership of  
12 (Indiscernible). Later this week we have custody and  
13 withhold. The Debtors have identified other issues, such as  
14 whether customers have claims against old Debtors and other  
15 issues. I'm moving as fast as I can to resolve these  
16 matters. It's a crushing load on my chambers. This is not  
17 the only case on my docket, but I'm committed to moving this  
18 case forward.

19 The Debtors are still paying all their bills as  
20 they come due. They pay vendors in the ordinary course of  
21 business or otherwise provided for by orders of the Court.  
22 All that weighs in favor of granting the motion. There is  
23 no evidence that I'm -- that I've seen that the Debtors are  
24 seeking to extend exclusivity to pressure Creditors. To the  
25 contrary, I think the Debtors realize that the only path to

1 success in this case is large Creditor support. The case is  
2 really less than four months old. You know, it comes --  
3 this request for extension of exclusivity comes less than  
4 four months after the petition date.

5 Given the complexity of the case, the number of  
6 stakeholders, the crucial issues that have to get resolved,  
7 whatever the plan is going forward, all of these favor the  
8 extension of exclusivity. So the motion is granted on the  
9 terms that were described earlier on the record.

10 MR. NASH: Thank you, Judge.

11 THE COURT: Okay. Let's move on (indiscernible).  
12 The uncontested matter of the fee examiners, the notice of  
13 presentment of opposed amended interim compensation and fee  
14 examiner orders filed as ECF Docket 1445. The objection  
15 deadline was December 4th at 2 p.m. No responses were  
16 received. That motion is granted.

17 All right. Let's go forward with the arguments in  
18 -- on the motion to dismiss in Celsius Network v. Stone.  
19 It's Adversary Proceeding Number 22-01139. The Debtor's  
20 motion to dismiss is ECF -- in that case is ECF 17. There  
21 had been a reply to the -- an opposition to the motion and a  
22 reply that had been filed.

23 MR. HURLEY: Good afternoon, Your Honor. Mitch  
24 Hurley on behalf of the Debtors. I'm sorry. Actually, I  
25 didn't catch are we -- are you ready to hear the motion to

1 dismiss? Did I (indiscernible)?

2 THE COURT: I am.

3 MR. HURLEY: So Your Honor, there are two  
4 adversary --

5 THE COURT: Let me get the appearance -- hold on,  
6 Mr. Hurley. Let me get the appearance for Stone and KeyFi.

7 MR. ROCHE: Good morning, Your Honor. Kyle Roche  
8 on behalf of KeyFi and Jason Stone.

9 THE COURT: Thanks very much, Mr. Roche.

10 All right, Mr. Hurley. Go ahead.

11 MR. HURLEY: Your Honor, I was going to make a  
12 suggestion actually, which is that there are two adversary  
13 matters on today. One of them is Prime Trust and it  
14 involves a settlement.

15 THE COURT: Okay.

16 MR. HURLEY: I suspect --

17 THE COURT: We can do that first.

18 MR. HURLEY: Yeah, I suspect it will go much more  
19 quickly.

20 THE COURT: Okay. All right. I agree, Mr.  
21 Hurley. And that is -- it's the seventh item on the agenda  
22 for this afternoon. Celsius Network Limited, et al v. Prime  
23 Trust, LLC. It's adversary proceeding Number 22-01140, the  
24 motion to approve the settlement with Prime Trust, LLC  
25 pursuant to Rule 9019 in the Federal Rules of Bankruptcy

1 Procedure. It's filed as ECF Docket Number 13 in that  
2 adversary proceeding. No responses have been received. Go  
3 ahead, Mr. Hurley.

4 MR. HURLEY: Thank you, Your Honor. Again, Mitch  
5 Hurley with Akin Gump Strauss Hauer and Feld, special  
6 litigation counsel for Celsius. So we're here today, Your  
7 Honor, on the motion to approve Celsius' settlement with  
8 Prime Trust, LLC, which is embodied in the stipulation and  
9 order that was filed on November 13th.

10 THE COURT: Let me just stop you for a second. Is  
11 an appearance being made this afternoon for Prime Trust?

12 MR. STEEL: Good afternoon, Your Honor. Howard  
13 Steel of Goodwin Proctor on behalf of Prime Trust.

14 THE COURT: Thanks, Mr. Steel. Okay.  
15 I'm sorry. Go ahead, Mr. Hurley.

16 MR. HURLEY: Thank you. So the stipulation --  
17 sorry, the settlement is embodied in stipulation and order  
18 that was filed with the court on November 14, 2022 with a  
19 revised version filed on November 30, 2022.

20 The stipulation represents a significant  
21 achievement in the cases, Your Honor. It provides Celsius  
22 with virtually all of the relief that was sought in the  
23 complaint, including the return of coins that are worth  
24 approximately \$15.2 million at recent prices.

25 The deadline to object to the motion for most

1 parties was November 28th. And as our review of the docket  
2 this morning indicates, we're not aware of any objections  
3 being filed.

4 At the UCC's request, we extended their objection  
5 deadline twice to November 30th, so that we and Prime Trust  
6 could exhibit the proposed changes to the stipulation. We  
7 did make modifications based on the UCC's requests. And we  
8 filed a modified stipulation and those changes are reflected  
9 in the version that was filed on November 30th.

10 The UCC also asked us --

11 THE COURT: Let me ask you this (indiscernible).  
12 Just briefly outline what the agreement provides for, just  
13 the material terms of the agreement. Let's get them on the  
14 record.

15 MR. HURLEY: Certainly, Your Honor. So, by the  
16 stipulation, Prime Trust agrees to transfer to Celsius all  
17 property in Prime Trust's possession, custody or control  
18 that was transferred to Prime Trust at any time by any  
19 Celsius user's. That's Paragraph 8 of the stipulation.

20 The stipulation provides that within five business  
21 days of entry of an order by the Court approving the terms  
22 of the stipulation, Prime Trust will transfer that subject  
23 property to Celsius designated wallets, for which only  
24 Celsius holds the private keys.

25 The Celsius designated wallets set up to receive



1 the Prime Trust transfer were established in accordance with  
2 the joint stipulation and agreed order between the Debtors  
3 and the Committee with respect to cryptocurrency security.  
4 That's ECF Number 813 -- and will be stored by the Debtors  
5 in a frozen workspace at Fireblocks Inc. and subject to the  
6 same security and transfer standards set forth in the  
7 cryptocurrency security stipulation with the UCC.

8           Upon Celsius' written confirmation of receipt of  
9 the transfer, the stipulation provides that Celsius and  
10 Prime Trust will mutually release each other for all past or  
11 present claims related to the subject property, as qualified  
12 in the stipulation.

13           Prime Trust will be exculpated from claims arising  
14 from its compliance with the stipulation as to users who  
15 received notice of the 9019 motion and did not object. And  
16 the users' custody account agreements with Prime Trust  
17 related to the subject property will be terminated as to  
18 users who received notice of the 9019 motion and did not  
19 object. This does not affect and is without prejudice to  
20 the users' rights under any agreements in which the user is  
21 a party with Celsius, and those agreements remain in full  
22 force and effect.

23           Within five business days of the transfer by Prime  
24 Trust, Celsius will then voluntarily dismiss with prejudice  
25 all the claims asserted in the adversary proceeding.

1           Because there is no way to rule out the  
2           possibility that a user could transfer property to Prime  
3           Trust in the future, and this is because, I think, as Your  
4           Honor probably is aware by now, in the crypto blockchain  
5           world, once there is an address that's been established, you  
6           can't really stop transfers from being made to it, so we  
7           have to accommodate the possibility that user's may continue  
8           to transfer assets to Prime Trust, though it maybe wouldn't  
9           be particularly sensible to do so.

10           So, under the stipulation, starting on March 31,  
11           2023 and until the effective date of a plan, Prime Trust  
12           will provide Celsius with quarterly reporting of any  
13           property that may be deposited by Celsius users after the  
14           initial transfer. And at Celsius' request, Prime Trust will  
15           transfer any such future deposits to the Celsius designated  
16           wallets, with Celsius paying the reasonable and necessary  
17           network fees for any future transfers.

18           The stipulation provides further that tracking and  
19           reporting related to any property that may be deposited with  
20           Prime Trust by users after the effective date will be  
21           determined by further agreement of the parties or by order  
22           of the Court.

23           The stipulation makes clear that upon receipt of  
24           the subject property, Celsius will not use, access,  
25           transfer, pledge or distribute the subject property, except

1 pursuant to further order of the Court.

2 The stipulation confirms the Prime Trust transfer  
3 of the subject property to the Celsius designated wallets is  
4 without prejudice to the right of any party, including any  
5 user, to assert any interest, including an ownership or  
6 other interest in any of the subject property, and that the  
7 transfer does not constitute an admission or acknowledgment  
8 by the parties in the stipulation that the subject property  
9 is or is not property of the estate.

10 That summarizes the main terms of the stipulation.  
11 If you would like, I could summarize the notice that we gave  
12 of the stipulation briefly, Your Honor?

13 THE COURT: No. I've reviewed that and  
14 unsatisfied that's been done. I just wanted to make sure on  
15 the record there was a discussion of what the terms of the  
16 settlement were.

17 MR. HURLEY: Okay.

18 THE COURT: Let me ask Mr. Steel whether you have  
19 any comments that you want to make.

20 MR. STEEL: Howard Steel, Goodwin, on behalf of  
21 Prime Trust. Nothing further, Your Honor, if you're  
22 satisfied with the notice.

23 THE COURT: I am. Okay. So, Mr. Hurley, I'm  
24 prepared to go ahead and rule at this point.

25 So, before me is this 9019 motion, ECF Docket

1 Number 13, in Celsius v. Prime Trust adversary proceeding.  
2 The Court concludes that notice of the proposed settlement  
3 was proper and no objections to the settlement have been  
4 received.

5 In all such instances, the Court evaluates the  
6 merits of the settlement, essentially applying the seven  
7 nonexclusive factors set forth by the Second Circuit in In  
8 re Iridium Operating Systems. Since no objection to the  
9 settlement has been filed, I will not go through each of the  
10 Iridium factors, other than to say that the Court has  
11 considered each factor to the extent applicable in the  
12 circumstances.

13 The Court is satisfied that the settlement is  
14 fair, reasonable and in the best interests of the Debtors'  
15 estate. Absent the settlement, it could have resulted in  
16 expensive and protracted, prolonged litigation.

17 I think this outcome is clearly appropriate, and  
18 I'm very appreciative of the efforts of Celsius and of Prime  
19 Trust and their counsel in reaching this settlement. So  
20 this settlement is approved --

21 MR. HURLEY: Thank you, Your Honor.

22 THE COURT: -- with the changes that were added in  
23 the discussions between the Committee and the Debtors as  
24 well. Thank you very much, Mr. Steel. Mr. Hurley?

25 MR. HURLEY: So I think that brings us to the

1 complaint against Stone, and that's actually a motion to  
2 dismiss by the Defendants. So that's --

3 THE COURT: Yes.

4 MR. HURLEY: -- Mr. Roche.

5 THE COURT: Okay. Mr. Roche?

6 MR. ROCHE: Good afternoon.

7 THE COURT: So, just for the record, this is  
8 Celsius Network Limited v. Stone, Adversary Proceeding 22-  
9 01139. All right. Go ahead, Mr. Stone.

10 MR. ROCHE: Accepting all facts in the first  
11 amended complaint is true, this Court should dismiss  
12 Plaintiffs' claims for turnover, conversion, fraudulent  
13 misrepresentation, unjust enrichment, replevin and  
14 accounting.

15 Parties in this action negotiated over many  
16 months, multiple agreements that would govern their business  
17 relationships, the deployment of coins under those  
18 agreements, and the compensation between the parties for  
19 those services. Because of this --

20 THE COURT: Am I correct, Mr. Stone, that you have  
21 not moved to dismiss Count 4, the breach of fiduciary claim?

22 MR. ROCHE: It's Mr. Roche, Your Honor, on behalf  
23 of Mr. Stone.

24 THE COURT: I'm sorry. I'm sorry, Mr. Roche. I'm  
25 sorry. Apologize for that.

1 MR. ROCHE: Not a problem. We are not moving to  
2 dismiss at this time the Count 4. Just --

3 THE COURT: Okay. Go ahead.

4 MR. ROCHE: Because of this negotiation, the case  
5 at bottom is a contract dispute concerning the asset  
6 purchase agreement, the APA, as referred to in the briefing,  
7 and the services agreement that are incorporated by  
8 reference --

9 THE COURT: Mr. Roche, let me stop you there. The  
10 standard that I have to apply in deciding whether to grant a  
11 motion to dismiss -- we'll put aside any fraud claim that  
12 Rule 9 comes into play -- is whether the complaint -- the  
13 well-pleaded facts of the complaint have stated causes of  
14 action.

15 I understand the narrative that your motion to  
16 dismiss pursues, where this is all a breach of contract,  
17 this is all a contract dispute. But the issue before me --  
18 and it may be that in a defense of the action, you will be  
19 able to persuade the Court that somehow contract claims --  
20 that's what this is all about. But the issue for today is  
21 whether the well-pleaded facts of the complaint has stated  
22 causes of action for turnover under 542, conversion,  
23 fraudulent misrepresentation, unjust enrichment, replevin  
24 and accounting.

25 There's seven causes of action in the complaint.

1 The only one that you have not moved on is the breach of  
2 fiduciary duty claim. Some of the counts are against both  
3 Defendants. The turnover, conversion, fraudulent conveyance  
4 are against both Defendants. The breach of fiduciary duty  
5 is against Stone only. The unjust enrichment is against  
6 capstone only. The replevin is against both Defendants.  
7 And the accounting is against Stone only.

8 So, what you need to focus your argument before me  
9 today -- and I've read all these papers -- is why this  
10 complaint, on its face, does not -- the well-pleaded  
11 allegations of the complaint do not allege the causes of  
12 action set forth.

13 MR. ROCHE: Yes, Your Honor. And I believe it's  
14 appropriate -- taking the complaint on its face, the asset -  
15 - the APA and the services agreement still, by reference,  
16 are incorporated in the complaint in Paragraph -- just  
17 pulling up -- Paragraph 21 of the first amended complaint  
18 states, "Pursuant to the asset purchase agreement and the  
19 services agreement, Defendant Stone was to continue  
20 deploying Celsius' coins as CEO of Celsius KeyFi to the  
21 extent authorized in advance by Celsius." And many of the  
22 issues raised in the first amended complaint go to the  
23 question of authorization under that agreement, the asset  
24 purchase agreement.

25 So, when considering the legal sufficiency of the

1 claims -- and I'll go through them one by one and why they  
2 should be dismissed -- when considering the asset purchase  
3 agreement, I do believe it's appropriate for the Court to  
4 consider the APA.

5 And starting with the asset purchase agreement --  
6 excuse me -- starting with the turnover claim, Plaintiffs  
7 cannot plead around the existence of a bona fide dispute  
8 over ownership of the property by simply asserting that the  
9 Defendants' claims to that property are frivolous. I  
10 believe In re VeraSun Energy Corp. is instructive there.

11 In that case, the court was confronting a turnover  
12 claim in accounts receivable, and like this matter, the  
13 plaintiffs were asserting that just because an accounts  
14 receivable claim is subject to litigation, doesn't make it a  
15 bona fide dispute. But the Court disagreed there, finding  
16 that the denial of the existence of an agreement and the  
17 existence of a dispute over the outstanding balance was  
18 enough to dismiss the turnover claim because there was a  
19 bona fide dispute.

20 And here, the APA was entered into by all the  
21 parties to this litigation. And accepting all the facts in  
22 the first amended complaint as true, Stone and KeyFi first  
23 asserted breach of contract claims against Celsius by at  
24 least September 1, 2021. That's Paragraph 41 in the first  
25 amended claim.



1 Paragraph 42 in the first amended complaint shows  
2 that the parties engaged in settlement discussions for at  
3 least 10 months. And Paragraph 43 shows that KeyFi brought  
4 suit against Celsius after those discussions broke down,  
5 seeking additional damages.

6 And so we're not asking for the Court to consider  
7 the KeyFi complaint. But as Celsius in Footnote, I believe,  
8 2 asks this Court to consider -- and we're fine for that  
9 standard -- the mere filing of -- to take judicial notice of  
10 the filing of the complaint as it relates to the existence  
11 of whether or not there is a bona fide dispute and whether a  
12 turnover claim has been properly pleaded.

13 And Celsius' only response to the question of  
14 whether or not there is a bona fide dispute, for purposes of  
15 determining the legal sufficiency of the turnover claim is -  
16 - they assert that, "It is their strongly held view that the  
17 claims and allegations contained in the KeyFi complaint are  
18 entirely false and indeed frivolous." The Court does not  
19 need to accept that --

20 THE COURT: But the KeyFi -- excuse me, Mr. Roche.  
21 The fact that KeyFi filed a State Court complaint does not  
22 mean that this complaint in this case does not include well-  
23 pleaded allegations of each of the causes of action. The  
24 fact that KeyFi and Stone, for whatever its reasons, decided  
25 to be the aggressor and promote its narrative in a State

1 Court complaint doesn't mean that the face of this complaint  
2 does not set forth well-pleaded facts to support each of the  
3 claims that are included.

4 MR. ROCHE: I agree.

5 THE COURT: You can't just simply say we sued them  
6 first; we said they owe us a bundle of money. That is not a  
7 defense to this action.

8 MR. ROCHE: No. And I completely agree with  
9 respect to all the other claims except the turnover claim.  
10 Under 542(a) and (b), if there is a bona fide dispute, a  
11 turnover -- a claim and turnover claim, a garden variety  
12 claim for contract can't be turned into a turnover claim, if  
13 there is a bona fide dispute. And --

14 THE COURT: So, at bottom, Plaintiffs' argument is  
15 that the original coins never stopped being Debtor's  
16 property. Debtor held title in any property that was  
17 obtained with the Debtor's coins. Defendants' argument is  
18 that following the events that you described, at some point  
19 in time both forms of property, coins and property obtained,  
20 the property became Defendants' property. Or at a minimum  
21 there is a dispute to their title dooming the turnover  
22 claim. And there are a host of problems with that argument,  
23 Mr. Roche. I'm not going to go through each of them now,  
24 but I think you're off-base.

25 MR. ROCHE: Well, so, Your Honor, I think the only

1 question the Court needs to determine for resolving the  
2 motion is whether or not the first amended complaint, on its  
3 face, shows that there is a bona fide dispute to that. I  
4 think the questions are -- the question is different for the  
5 conversion claim and the other causes of action. But I  
6 think for at least -- and I would ask -- I believe In Vera  
7 Energy Corp. is instructive there because --

8 THE COURT: Mr. Roche, you cite LaMonica v. CEVA  
9 Group PLC, 582 B.R. 46 (Bankr. S.D.N.Y. 2018). The court in  
10 that case refused to review documentary evidence outside the  
11 pleadings at the motion to dismiss stage to determine  
12 whether there was a bona fide dispute, including a Section  
13 542 claim. You rely on that case. It cuts right against  
14 you.

15 MR. ROCHE: So, in CEVA, the documents that were  
16 being asked to be relied upon, it wasn't a previous dispute.  
17 So our distinction under CEVA is that where there is a pre-  
18 existing -- as a matter of law, where there is a pre-  
19 existing dispute, as a matter of law a turnover claim cannot  
20 stand to that same property, because the existence of the  
21 previous dispute is evidence of the existence of a bona fide  
22 dispute.

23 THE COURT: Mr. Roche, in your opposition, you  
24 seem to agree that these coins belong to the Debtor and  
25 you're willing to work out a stipulation to return them.

1 MR. ROCHE: You're saying the opposition for the  
2 preliminary injunction?

3 THE COURT: Yeah. Yes, you did.

4 MR. ROCHE: Not -- Your Honor, I believe that's  
5 not accurate. The tokens at issue do not belong to the  
6 Debtor. The tokens at issue belong --

7 THE COURT: All right. Let's --

8 MR. ROCHE: (indiscernible)

9 THE COURT: Let's go on. Go on to the other  
10 causes of action.

11 MR. ROCHE: Sure. Turning to the conversion  
12 claim, again, accepting their allegations as true, they've  
13 alleged, one, an inappropriate use of assets. They gave to  
14 the Defendant -- that they gave to Defendant. It was  
15 Celsius' conversion claim, at bottom. And this is Paragraph  
16 -- turning to their conversion claim -- Paragraph 52 of  
17 their -- of the first amended complaint alleges that at  
18 bottom, Celsius gave coins to the Defendants in this  
19 litigation. And the Defendants inappropriately used those  
20 assets and failed to return those assets.

21 But again, the asset purchase agreement governs  
22 this conduct. Schedule 7.8 of the asset purchase agreement  
23 -- and if Your Honor has the asset purchase agreement in  
24 front of them -- in front of it -- I would direct it to what  
25 is Page -- it's Page 29 of the PDF and Schedule 7.8. It

1 defines what the authorized activities are.

2 And so, Citadel Management here, again is directly  
3 on point. There, there was a contracted issue where a  
4 plaintiff gave to the defendant \$11 million worth of assets.  
5 And in return, the defendant was to make periodic interest  
6 payments, assign ownership of particular properties, and  
7 then give back the principal at the end of the contract at  
8 issue. But the defendant didn't do that. The defendant  
9 just instead took the \$11 million and failed to perform the  
10 other obligations under the agreement.

11 And that's what we have here. We have a contract.  
12 They've alleged that they gave Stone these assets, they gave  
13 KeyFi and Stone these assets, and that Stone and KeyFi  
14 failed to return some of these assets. But that's conduct  
15 that would be barred by the existence of the asset purchase  
16 agreement. It's not separate and independent. Celsius has  
17 not alleged any acts. And if you look at their opposition  
18 brief, they don't point to any conduct separate and part  
19 that would not be a garden variety breach of contract claim.  
20 And they can't point to any conduct outside of the asset  
21 purchase agreement that would give rise to a cause of  
22 action. So, for those reasons, they haven't alleged an  
23 independent (indiscernible) separate and apart from breach  
24 of contract.

25 And moving on to the unjust enrichment, replevin

1 and accounting claims, it's the same issue, Your Honor.  
2 There is an asset purchase agreement that under Schedule 7.8  
3 shows what KeyFi and Stone were supposed to be doing with  
4 these assets. It defines the centralized -- authorized and  
5 central finance activities, defines how they're supposed to  
6 be accounted for the net profits, and defines the scope of  
7 what the parties were to be doing with the tokens, how the  
8 tokens would be returned to Celsius, for the duration of the  
9 performance of the activities that Mr. Stone and KeyFi were  
10 doing on behalf of Celsius and Celsius KeyFi.

11 And so the unjust enrichment, replevin and  
12 accounting claims fail for the same reason that the  
13 conversion claims do.

14 So, first, on the unjust enrichment claim, in  
15 order to plead the claim in the alternative, and plead  
16 unjust enrichment alternative to a breach of contract claim,  
17 there must be either a bona fide dispute concerning the  
18 distance of the contract. We don't have that here. Celsius  
19 admits that there's an asset purchase agreement and they  
20 admit in Paragraph 21 that pursuant to the asset purchase  
21 agreement, Stone and KeyFi were deploying coins on their  
22 behalf.

23 For the second way around a breach of -- to bring  
24 an unjust enrichment claim in the alternative is where the  
25 contract doesn't cover the dispute. And so that's the

1 question of law before this Court, is does the contract  
2 govern the dispute that Celsius has alleged in its first  
3 amended complaint? And it plainly does. Section 7.8  
4 defines what the Defendants in this case were entitled to do  
5 and what Celsius was contracting for them to do with their  
6 tokens.

7 So, again, what their unjust enrichment claim  
8 alleges is, one, that they used Celsius property and its  
9 proceeds to "acquire NFTs without authorization, transferred  
10 such NFTs and other Celsius property away from Celsius, and  
11 used that property and its proceeds to develop what Stone  
12 refers to as an investment company."

13 But this just goes back to the Citadel case, where  
14 parties had an agreement at issue. And we're not arguing  
15 that that -- I'm not arguing against the facts that they  
16 have alleged. They have alleged that Stone misappropriated  
17 assets. They've alleged KeyFi misappropriated assets. They  
18 allege that he transferred assets without authorization.  
19 But that's all governed by Schedule 7.8 of the asset  
20 purchase agreement, which all the parties in this case are  
21 signatories to.

22 And so that, for purposes of the legal sufficiency  
23 of their unjust enrichment, replevin and accounting and  
24 conversion claims, means that those claims, as a matter of  
25 law, are deficient, and that this case would -- at least

1 with respect to those claims, Your Honor, should be brought  
2 as breach of contract claims, pursuant to the independent  
3 Court document.

4 THE COURT: All right. Anything else you want to  
5 add?

6 MR. ROCHE: Just lastly, on the fraudulent  
7 misrepresentation claim, they assert primarily three -- in  
8 their opposition, they set out the three statements that  
9 they're relying on for their fraudulent misrepresentation  
10 claim.

11 So, first, in August 2020, they claim Stone and  
12 KeyFi assured Celsius that he was hedging -- that Stone and  
13 KeyFi were going to hedge the price movements in the crypto  
14 assets that they were using to deploy -- using -- that they  
15 were investing.

16 The second statement -- and this is -- I'll pull  
17 it up in their opposition brief -- I'm looking at Page 19-20  
18 of their opposition brief. They outline hedging,  
19 profitability and visibility and return of coin.

20 And so, at bottom, there's three statements  
21 essentially. Stone KeyFi told Celsius they were hedging.  
22 Stone KeyFi told --

23 THE COURT: So, Mr. Roche? Mr. Roche, in --

24 MR. ROCHE: Yes.

25 THE COURT: -- in the Plaintiffs' opposition to



1 your motion, you say -- first off, you say that they haven't  
2 made specific -- they haven't alleged specific  
3 misrepresentations and -- finding my notes -- at Pages 19  
4 and 20 of the opposition, the Plaintiff points to specific  
5 dates and quotes and provides details -- detailed  
6 information, time periods to apprise Defendant of the  
7 general time period of any misrepresent -- of the 9(b)  
8 requirements.

9 So, their opposition specifically -- you say they  
10 didn't, and they point out those very -- the specifics --

11 MR. ROCHE: I --

12 THE COURT: -- at Pages 19 and 20 of their --

13 MR. ROCHE: I apologize.

14 THE COURT: -- opposition.

15 MR. ROCHE: I said they did. I was quoting  
16 exactly -- they point to three statements and I wanted to  
17 walk Your Honor through why each of those statements does  
18 not -- cannot stand -- doesn't satisfy the elements of  
19 fraudulent misrepresentation. First --

20 THE COURT: Go ahead.

21 MR. ROCHE: -- with respect to each of those three  
22 statements, they do not allege in the first amended  
23 complaint that Stone or KeyFi knew those statements were  
24 false when they were made. And then, so that's for -- with  
25 respect to each of those statements.

1           The second -- so then with respect to the first  
2           and second statement on Page 19-20 of their opposition  
3           brief, those are the statements concerning hedging and the  
4           profitability of the investments. Those cannot serve as  
5           misrepresentations because the conduct complained of would  
6           be governed by the scope of authorized services under the  
7           asset purchase agreement. Again, Schedule 7.8. Under New  
8           York Law, the reasonable reliance element of fraud is  
9           precluded when an express provision in a written contract  
10          contradicts a prior alleged representation in a meaningful  
11          fashion.

12           Here, what they claim is that Stone said, I'm  
13           going to be hedging certain transactions and that the  
14           investments are profitable. But the contract at issue here,  
15           the asset purchase agreement, outlines what Stone and what  
16           KeyFi were to be doing with the coins at issue.

17           And so we're again, under New York law, where  
18           there's a contract that governs -- or contradicts a prior  
19           misrepresentation in a material fashion. And Your Honor,  
20           the statements on Page 19 of the opposition to the motion to  
21           dismiss, those both predate the asset purchase agreement.  
22           The asset purchase agreement was executed at the beginning  
23           of January of 2021. Those two statements occurred in August  
24           and towards the end of 2020 and are directly refuted by the  
25           language governing Stone and KeyFi's responsibilities under

1 the asset purchase agreement and Section 7.8.

2 And then their last statement is essentially Stone  
3 misrepresented the timing of when he was going to return the  
4 coins and misrepresented that he was going to return all of  
5 the coins. And their alleged harm there is that Celsius was  
6 prejudiced by that misrepresentation -- that's assume it's a  
7 misrepresentation, because Celsius did not -- wasn't able to  
8 timely file an action.

9 Well, again, under the weight of their own first  
10 amended complaint, they knew of the alleged  
11 misrepresentation by at least May of 2021. And they knew  
12 that Stone was asserting claims against them by September  
13 2021. Yet they didn't file this action until August of  
14 2022.

15 So, any claim that they suffered harm from relying  
16 on that statement, the statement that he was going to return  
17 coins, and that they delayed pursuing litigation on reliance  
18 of that statement is not plausible.

19 Unless Your Honor has any further questions at  
20 this time, Defendants have nothing further.

21 THE COURT: Okay. Mr. Hurley?

22 MR. HURLEY: Thank you, Your Honor. Again, for  
23 the record, Mitch Hurley, with Akin Gump Strauss Hauer &  
24 Feld. Your Honor, Celsius brings this action to recover  
25 property that the Defendants stole. And the way the

1 Defendants stole that property was by entering digital  
2 wallets that belonged to Celsius, transferring coins and  
3 other digital assets that belonged to Celsius to their own  
4 wallets, and laundering the proceeds of those transfers  
5 through a money laundering application called Tornado Cash.  
6 The stolen property is worth millions of dollars and Celsius  
7 seeks to recover it for the benefit of its creditors.

8 As you noted, the Defendants seek -- make a motion  
9 to dismiss all the claims except for breach of fiduciary  
10 duty. There are at least two fundamental and fatal problems  
11 with the approach that the Defendants take. Your Honor has  
12 hit, I think, on both of them. But let me reemphasize.

13 First, this is a motion to dismiss under Rule  
14 12(b)(6). It is not a summary judgment motion. It's a pre-  
15 discovery motion, and I want to emphasize that. There has  
16 not been a scrap of paper produced by the Defendants in this  
17 case. We sought discovery. We served discovery on  
18 September 28th. Their responses were due on October 28th.  
19 They promise they were going to start the rolling production  
20 on November 28th. We still don't have a page.

21 It's not to bring a premature discovery dispute  
22 before Your Honor, Your Honor, just to emphasize that this  
23 is the very beginning of the case. It's a 12(b)(6) motion,  
24 not a summary judgment motion.

25 On a 12(b)(6) motion, of course Your Honor has to

1 take us through the facts that are pleaded in Celsius'  
2 complaint and confine the analysis to the facts that are  
3 stated in the complaint and documents appended or integral  
4 to the complaint.

5 In their motion, the Defendants really do ask you  
6 to do the exact opposite. They ask you to set aside  
7 Celsius' well-pleaded allegations and accept theirs instead.  
8 Of course, you can't do that under a 12(b)(6) standard.

9 The second really fatal flaw of their approach,  
10 Your Honor, is their really desperate attempt to try to turn  
11 this into a breach of contract action. This is not a breach  
12 of contract action, Your Honor. The complaint alleges an  
13 extraordinary pattern of theft, money laundering and other  
14 misconduct that I will detail in a moment, and amply  
15 supports the tort and equitable claims that Celsius brings.

16 Unlike virtually all of the cases the Defendants  
17 cite, in this case, Celsius doesn't allege breach of  
18 contract. Let's talk about why for a second. So, first,  
19 heard Mr. Roche refer to the asset purchase agreement, and  
20 he actually -- he just said all the parties here are a party  
21 to the asset purchase agreement. First of all, that's not  
22 true. Defendant Stone is not a party to the asset purchase  
23 agreement.

24 But more importantly, the terms that Mr. Roche  
25 keeps referring to are in a schedule that is referred to the

1 summary of key terms that was attached to the asset purchase  
2 agreement, and that is a schedule of terms that the parties  
3 contemplated would be included in a subsequent agreement  
4 called the services agreement. In fact, the services  
5 agreement was entered into and it embodies some of those  
6 terms, but not all, and it's an integration.

7 Neither Defendant is a party to the services  
8 agreement. So, in other words, neither Defendant is a party  
9 to the agreement that contains the terms that you just heard  
10 Mr. Roche rely on.

11 Celsius in this case doesn't allege breach of  
12 contract, partly for the obvious reason that neither  
13 Defendant is a party to that contract. Celsius identifies  
14 the services agreement and some other contracts, but it does  
15 not rely on them in alleging its claims.

16 But even if the services agreement could be  
17 considered on the motion, Your Honor, it wouldn't change  
18 anything, because all of the Defendant's' arguments,  
19 including the ones that supposedly are based on the  
20 contracts, depend on material that is found nowhere in the  
21 complaint and nowhere in any contract or any other document  
22 that's identified in the complaint. And again, that means  
23 that a Rule 12(b)(6) motion -- there motion has to be  
24 denied.

25 Okay. So, since this is a Rule 12(b)(6) motion, I

1 thought it would make sense to briefly highlight some of the  
2 key allegations that actually are alleged in the complaint,  
3 Your Honor. And with the Court's permission, I'd like to  
4 put up a demonstrative with a timeline of certain of those  
5 allegations. May I do that?

6 THE COURT: Yes, go ahead.

7 MR. HURLEY: Okay. Mr. Chapman, I think, is on  
8 still, and I think we need to give him access to be able to  
9 share his screen.

10 CLERK: Okay. Mr. Chapman is a co-host.

11 MR. CHAPMAN: Thank you.

12 MR. HURLEY: Perfect. There he is. He looks like  
13 a deer in the headlights, but it's... All right. So, it's  
14 been a long day, Your Honor, and you've read the papers, but  
15 I do think it's important to highlight some of these  
16 allegations. So, Celsius alleges in its complaint that in  
17 August 2020, Celsius engaged Defendants to conduct staking  
18 and DeFi activities with Celsius coins. That's Paragraph  
19 18.

20 In or around the same time, Celsius alleges in  
21 Paragraph 20, began transferring Celsius coins to a Celsius  
22 wallet and provided the Defendants with a private key for  
23 that wallet. Private key to a wallet is like a passcode for  
24 an ordinary account, except that it can't be changed. Stone  
25 was given the private key, solely so he could deploy coins

1 in in authorized staking and DeFi activities. That's  
2 Paragraph 20.

3 Celsius alleges that in early 2021, it instructed  
4 Defendant to return all of Celsius' property. That's  
5 Paragraph 24. Celsius alleges that Defendants actually  
6 agreed that they would return all of Celsius' property.  
7 However, Celsius alleges, Defendants actually secretly  
8 embarked on a series of transactions and transfers without  
9 Celsius' knowledge or authorization.

10 Among other things, Celsius alleges on February 1,  
11 2022, Defendants used 600 Celsius ETH to buy NFTs called  
12 CryptoPunks. Celsius alleges he was never authorized to buy  
13 NFTs. At that time, Your Honor, 600 ETH was worth about  
14 \$800,000.

15 On February 19th and 27th, Celsius alleges the  
16 Defendants transferred a total of 450 Celsius ETH directly  
17 from Celsius wallets to their own wallets. The stolen ETH  
18 at that time, Your Honor, was worth about a million dollars.

19 On March 6th, the Defendants, Celsius alleges,  
20 began to transfer the NFTs they had bought with Celsius  
21 coins without authorization from Celsius' wallet to  
22 Defendants' wallet.

23 On March 9th, Stone claims that he resigned his  
24 position as CEO of Celsius. But the very next day, Celsius  
25 alleges, Defendants transferred 20 more Celsius ETH, about



1 \$40,000.

2 On March 16th, Defendants transferred more NFTs  
3 that they purchased with Celsius coins from Celsius wallets  
4 to Defendants' wallets. That's Paragraph 35. And in the  
5 most probably extraordinary bit of misconduct that's alleged  
6 here, Your Honor, on September 21, 2021, six months after  
7 Defendant says he resigned from Celsius, Defendants used  
8 their access to Celsius private keys to steal 1.4 million  
9 stablecoins called DAI. DAI, Your Honor, is a coin that's  
10 pegged to the dollar. So one stablecoin is one dollar. So  
11 that's \$1.4 million dollars.

12 At that time, Celsius knew that Defendants had the  
13 private keys for the Celsius wallet, but believed that  
14 wallet contained nothing of value. And in fact, at the time  
15 it didn't. But in September, a smart contract that was  
16 related to a deployment the Defendants made before departing  
17 Celsius deposited automatically the 1.4 million DAI in the  
18 Celsius wallet, with no notice to Celsius. But the  
19 Defendants were waiting, apparently.

20 Celsius alleges that on September 21, 2021, the  
21 Defendants accessed Celsius' wallet, transferred that 1.4  
22 million DAI to their own wallets, and then converted that  
23 DAI into ETH. And on 17 transactions, you can see on the  
24 blockchain over the next couple of months, laundered that  
25 \$1.4 million through Tornado Cash. That's Tornado Cash as

1 the on-chain mixer that has been banned by OFAC because of  
2 it's frequent use to hide the proceeds of cybercrimes.

3 And this is not Defendants' first use of Tornado  
4 Cash. Celsius alleges multiple other uses, including in  
5 Paragraph 38. Celsius also alleges that in addition to the  
6 thefts I just identified, Defendants never returned a large  
7 number of other coins and property that were made available  
8 to them through the wallets. Celsius does not know what  
9 happened to those coins, Your Honor.

10 Again, there hasn't been any discovery produced  
11 and the Defendants have refused to account for their  
12 activities with the Celsius coins. But Celsius alleges in  
13 the complaint that those coins also may have just been  
14 stolen by the Defendants.

15 So, Your Honor, these are the specific allegations  
16 that are actually contained in the complaint and that  
17 animate Celsius' claims. They are more than sufficient to  
18 sustain each of the tort claims and the equitable claims  
19 that are alleged. And for the most part, the Defendants  
20 really don't even argue that Celsius has failed to allege  
21 the elements of its claims. Instead, what they do is they  
22 rely on factual assertions outside of the complaint to argue  
23 that despite Celsius having alleged those elements, the  
24 claims should be dismissed.

25 Let me start with turnover. So, basic --

1 THE COURT: Mr. Hurley, I'm going to stop you.  
2 I've read all the papers.

3 MR. HURLEY: Okay.

4 THE COURT: Let me hear very briefly from Mr.  
5 Stone -- Mr. Roche -- excuse me. Mr. Roche, go ahead.

6 MR. ROCHE: Just a few points I want to clarify.  
7 So, KeyFi was a party to the agreement, and I believe Mr.  
8 Hurley said I misspoke. I did not misspeak. I said all the  
9 parties were signatories to the agreement. Mr. Stone signed  
10 on behalf of KeyFi the asset purchase agreement.

11 And Your Honor, I think Mr. Hurley -- what I would  
12 say is, yes, we agree that absent an agreement and absent  
13 the incorporation of agreement into this complaint, they  
14 have, for purposes of their first amended complaint, pled  
15 the elements of conversion, of turnover, of --

16 THE COURT: Replevin, unjust enrichment. You name  
17 it; they've alleged it.

18 MR. ROCHE: Except the existence of the asset  
19 purchase agreement is critical. And under New York law,  
20 where there is a conflict, a claim for conversion, unjust  
21 enrichment, replevin and accounting cannot stand. And where  
22 that contract can particularly -- excuse me -- explicitly  
23 contemplates that the parties are going to be joining --  
24 creating an entity to deploy coins and for Celsius to deploy  
25 coins, the proper nature of their claim is one in contract

1 and not in tort.

2 THE COURT: All right. I'm going to stop you  
3 there. I'm telling you now that I'm going to be entering an  
4 opinion denying the motion to dismiss as to each and every  
5 count that you've sought to dismiss. We have a preliminary  
6 injunction hearing scheduled for January. That's going to  
7 remain on the docket with the schedule that's been agreed.

8 I don't want to hear that you're dragging your  
9 feet in providing discovery. Mr. Hurley, if there are  
10 discovery issues that you feel are not being sufficiently  
11 addressed, I require you meet and confer.

12 And to the extent that you need the assistance  
13 from the Court, you contact my Courtroom Deputy, Deanna  
14 Anderson, and hearings will be scheduled for that day or the  
15 next day, or at the most, two days after. I don't want  
16 motions to compel. We take it up and there'll be a Zoom  
17 hearing.

18 If I conclude that I need any briefing, I'll  
19 require short letter briefs. But discovery is going to move  
20 along rapidly. We have a schedule for a preliminary  
21 injunction hearing. In due course, a written opinion  
22 denying the motion to dismiss will be entered.

23 I did see Mr. Roche's opposition to the  
24 preliminary injunction hearing. I wanted to ask each of you  
25 -- one of the issues that he raises is to whether or not

1       there was supposed to be an accounting, and I wanted to see  
2       whether the two of you have discussed trying to reach an  
3       agreement to provide for a prompt accounting that might  
4       narrow the issues, if at all. Otherwise, we'll just go  
5       forward with the preliminary injunction.

6               But the opposition offered to enter into a  
7       stipulation to resolve most of the issues, but not all. But  
8       there was much said about whether there had been an  
9       agreement for an accounting.

10              So I guess my question for the two of you is, have  
11       you discussed whether you're able to reach an agreement for  
12       an accounting? Will that obviate the need for the  
13       preliminary injunction hearing or shorten it, or come up  
14       with a new schedule for it? Otherwise, we'll just go  
15       forward on the schedule that exists.

16              And I don't want to -- we're not going to get into  
17       a discovery conference now, but I'll tell you right now, Mr.  
18       Roche, if there was discovery served, which there was, and  
19       an agreement to produce, and you haven't, there'd better be  
20       a really good reason for it, because I'm going to insist on  
21       all discovery necessary being taken in time for the  
22       preliminary injunction hearing.

23              Mr. Hurley, let me ask you first. Have you had  
24       any discussions with Mr. Roche about an accounting?

25              MR. HURLEY: Well, not an accounting specifically,

1 Your Honor. But the -- so the relief that we sought on the  
2 motion for an injunction originally, obviously, sought the  
3 freezing of the property, but in addition, some other  
4 relief, including a sworn statement from Mr. Stone  
5 identifying certain property that was taken and that was  
6 acquired. And that -- in the category of relief that I  
7 understand Mr. Roche in his opposition to and saying he no  
8 longer opposes.

9 So we provided to Mr. Roche, after reading the  
10 opposition, a proposed stipulation and order that would  
11 enter all of the relief, other than the relief that he says  
12 he doesn't oppose. And we sent that over to him I think on  
13 Friday. So we'll see how he responds.

14 But my expectation and hope would be that would  
15 result in at least by the time we have the injunction,  
16 you'll have a sworn statement that at least identifies all  
17 of the property that's at issue in the injunction.

18 MR. ROCHE: Your Honor, so just a couple points of  
19 clarification. We have engaged in sufficient discovery.  
20 We've been negotiating over search terms. We've collected  
21 over 150,000 documents from the Defendants in this case.  
22 And so we are planning prompt discovery. Part --

23 THE COURT: When are you going to produce the  
24 documents? You say you collected 150,000 documents. What  
25 are you going to produce them?

1 MR. ROCHE: We're going to produce them when we  
2 agree on search terms. The initial search terms that were  
3 sent over included a little bit more than 40,000. The  
4 parties are, I believe -- Defendant -- or excuse me --  
5 Plaintiffs have asked for Mr. Stone's deposition to go  
6 forward ahead of December 23rd and to have some discovery.  
7 As part of that deposition, we agreed to produce that as  
8 Plaintiffs have asked, five days ahead of that deposition.  
9 So that discovery is going to -- will be produced five days  
10 ahead of the deposition. And in parallel with that, we will  
11 continue reviewing all the other documents, once we get a  
12 set of search terms agreed to.

13 On the relief that's being requested, the main  
14 relief that we oppose is the entry of a freezing order  
15 concerning property -- the property that is at issue, that  
16 Defendants assert, and as outlined in the New York Supreme  
17 action, was paid as compensation, which Plaintiffs in this  
18 action say was stolen. That's a subject for the preliminary  
19 injunction hearing.

20 As far as the other issues and accounting, we're  
21 happy to engage in accounting. The asset purchase agreement  
22 and the services agreement contemplated accounting when  
23 there is a dispute over the amount. And in fact, it was the  
24 Defendants in this case that initially evoked the audit  
25 provision of the asset purchase agreement over a year ago.

1           We're happy to identify the property that -- I  
2           think there's going to be some definitional work that needs  
3           to be worked out between the parties. Plaintiffs sent a  
4           letter over on Friday. My grandmother passed away and so  
5           I'm -- had to do some traveling for the funeral and the wake  
6           this weekend. But I plan on responding to that either late  
7           tonight or early tomorrow to get some form of agreement on  
8           how the parties could do an accounting.

9           Your Honor, I would point out, a simple  
10          interrogatory could have been issued to identify all of the  
11          assets at issue. We would have responded to that. And  
12          during the course of the past year and a half, we did  
13          identify for the Plaintiffs here --

14          THE COURT: I don't want to hear what happened  
15          over the last year and a half. I want a resolution of the  
16          discovery issues promptly. I want -- if the two of you and  
17          your clients agree to an accounting or an audit, let's get  
18          that resolved.

19          Mr. Hurley, have you come up with a set of search  
20          terms?

21          MR. HURLEY: So, Mr. Chapman has been handling  
22          that --

23          MR. ROCHE: We have, yes. We've run their search  
24          terms over the 150,000 documents. It's come down to about  
25          40,000. The parties have been going back and forth on



1 search terms, on search terms for both sides, and I expect  
2 we'll get an agreement there within the next week, week and  
3 a half. And --

4 THE COURT: That's too long. No --

5 MR. ROCHE: Okay.

6 THE COURT: Mr. Roche, that's too long. Who are  
7 you negotiating search terms with?

8 MR. ROCHE: The rest of the Akin team.

9 THE COURT: Mr. Hurley, whoever it is on your team  
10 who's doing that should meet and confer with Mr. Roche by  
11 5:00 next Monday. And this needs to get resolved.

12 MR. HURLEY: We will intend to do that much sooner  
13 than that, Your Honor.

14 THE COURT: That -- sooner the better. Okay. We  
15 go forward with the preliminary injunction hearing, I don't  
16 want to hear from anybody, we didn't get the discovery we  
17 wanted. Everything is going to be done. You've got a  
18 schedule. You're going to adhere to the schedule. If you  
19 can come to some agreement to avoid the necessity of the  
20 preliminary injunction, fine. Otherwise, let's just move  
21 forward.

22 I wanted to let you know today that I'm denying  
23 the motion to dismiss so you both know that you're charging  
24 ahead with the preliminary injunction hearing if that's not  
25 resolved.

1 MR. ROCHE: Understood, Your Honor. There's  
2 potentially one discovery issue that if we could get some of  
3 the Court's help on today, if you'd rather --

4 THE COURT: You can't.

5 MR. ROCHE: Okay.

6 THE COURT: You can't get --

7 MR. ROCHE: Understood.

8 THE COURT: You need to meet and confer and see if  
9 you can resolve it. And if you can't, the party needing the  
10 assistance of the Court contacts my Courtroom Deputy and  
11 you'll get a prompt hearing on it. We're not doing this on  
12 the fly. Okay?

13 MR. ROCHE: Understood, Your Honor.

14 THE COURT: All right. Anything else for today?

15 MR. ROCHE: Nothing for Defendants.

16 MR. HURLEY: Not for me, Your Honor.

17 THE COURT: Mr. Hurley?

18 MR. HURLEY: Not for me, Your Honor. Thank you.

19 THE COURT: All right. I think that concluded  
20 everything on the agenda for this afternoon. There are a  
21 number of adjourned matters that are listed on the agenda,  
22 but by my reckoning, we've covered everything that had to be  
23 dealt with during the agenda. Mr. Nash, is that consistent  
24 with your view?

25 MR. NASH: Yes, sir.

1 THE COURT: We are adjourned.

2 MR. NASH: Thank you, sir.

3 (Whereupon these proceedings were concluded at

4 3:12 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 7, 2022